

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 30, 2019

Lyle W. Cayce
Clerk

No. 19-20013
Summary Calendar

RICKIE THOMPSON,

Plaintiff-Appellant

v.

DOCTOR SHARMA SHARAD; JOHN SEALY HOSPITAL, GALVESTON,
TEXAS,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-4240

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Rickie Thompson, Texas prisoner # 828601, appeals the dismissal of his complaint under 42 U.S.C. § 1983. He also moves for the appointment of counsel. Thompson had 30 days from the entry of the November 15, 2018 judgment to file a timely notice of appeal. *See* FED. R. APP. P. 4(a)(1)(A). Thompson's pro se notice of appeal was filed, at the earliest, on December 27,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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2018, and is therefore untimely. *See id.*; *Cooper v. Brookshire*, 70 F.3d 377, 379-81 (5th Cir. 1995) (prison mailbox rule). Likewise, his postjudgment motion, styled as a motion under Federal Rule of Civil Procedure 59(e) or Federal Rule of Civil Procedure 60(b), was untimely as a Rule 59(e) motion and was not a Rule 60(b) motion that was “filed no later than 28 days after the [entry of] the judgment[.]” FED. R. APP. P. 4(a)(4)(A)(iv), (vi); *see* FED. R. CIV. P. 59(e).

A district court may grant a defendant an additional 30 days in which to file a notice of appeal upon a showing of excusable neglect or good cause. *See* FED. R. APP. P. 4(a)(5). Thompson’s postjudgment motion, which was filed within this additional 30-day period, sufficed as a motion under Rule 4(a)(5). Accordingly, Thompson’s appeal and motion are held in abeyance, and the case is REMANDED to the district court for the limited purpose of issuing a ruling under Rule 4(a)(5). Upon ruling, the district court shall promptly return the case to this court for dismissal or further proceedings, as may be appropriate.