

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8655
Conference Calendar

JOHN D. WARE,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 91-CA-840
- - - - -
August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

John D. Ware filed, pro se, a motion under 28 U.S.C. § 1651 requesting 161 days of federal jail time credit for the time spent while he was not in state custody. Treating Ware's motion as a petition under 28 U.S.C. § 2241, the district court adopted the magistrate judge's recommendation to grant the respondents' motion for summary judgment on August 21, 1992. The judgment was entered on the docket on August 24, 1992. Ware filed his notice of appeal on November 24, 1992, in which he indicated that he did

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

not receive a copy of the judgment until November 17, 1992. Ware did not respond to the issue of construing his notice of appeal as a motion for an extension of time. This Court is without jurisdiction because Ware has filed an untimely notice of appeal.

Compliance with Fed. R. App. P. 4(a) is a mandatory prerequisite to empower this Court with jurisdiction. Bond v. Western Auto Supply Co., 654 F.2d 302, 303 (5th Cir. 1981). Rule 4(a) provides that "if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry." Rule 4(a)(6), amended effective December 1, 1991, addresses cases of late notice of appeal. Latham v. Wells Fargo Bank, 987 F.2d 1199, 1202 (5th Cir. 1993). Rule 4(a)(6) provides that if a party entitled to receive notice of the entry of a judgment did not receive notice and that no party would be prejudiced, that party may file a request to reopen the time for appeal upon motion within 180 days of the judgment's entry or within 7 days of notice of its entry. Id. Ware indicated on his notice of appeal that he did not receive notice of the judgment until November 17, 1992, but he did not file a motion for an extension based upon the lack of notice, precluding reopening the time for filing an effective notice of appeal. See Latham, 987 F.2d 1202.

Accordingly, this appeal is DISMISSED.