

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2543
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LOUIS ELTON STONE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-89-297-1
- - - - -
(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This Court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). A notice of appeal in a criminal case must be filed within ten days of the judgment or order appealed from. Fed. R. App. P. 4(b). Because Louis Elton Stone is a pro se prisoner, his notice of appeal is deemed filed on the date that it is delivered to prison officials for filing. Fed. R. App. P. 4(c), 25(a); see Houston v. Lack, 487 U.S. 266, 276, 108 S. Ct. 2379,

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

101 L. Ed. 2d 245 (1988). Stone's notice of appeal is dated July 8, 1993, as is the certificate of service. However, it was not filed in the district court until July 20, 1993. The district court's order was entered on July 2, 1993. The tenth day after the entry of that order was July 12, 1993. Stone's appeal filed on July 20, 1993, was untimely because it was filed eight days late. See Fed. R. App. P. 26(a). Accordingly, this case should be remanded to the district court to determine whether Stone delivered the notice of appeal to prison officials within the 10-day period, and if not, whether there was excusable neglect for the untimely filing because Stone's notice of appeal was filed within thirty days of the expiration of the appeal period. See Fed. R. App. P. 4(b); Thompson v. Montgomery, 853 F.2d 287, 288 (5th Cir. 1988); United States v. Golding, 739 F.2d 183, 184 (5th Cir. 1984).

REMANDED.