IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30189
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERNEST BLANCHARD,

Defendant-Appellant.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA 92-3211 (CR-90-148 J)

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(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:[*]

Sixteen months after the district court's denial of Ernest Blanchard's motion pursuant to 28 U.S.C. § 2255, Blanchard filed a notice of appeal. This Court construes Blanchard's pro se notice of appeal liberally, see Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), as a motion for an out-of-time appeal. Giving full credit to the district court's finding that Blanchard did not receive the initial notice of the denial of his § 2255 motion that was sent by the clerk, his case

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

must still be dismissed for lack of appellate jurisdiction. See Briggs v. Lucas, 678 F.2d 612, 613 (5th Cir. 1982) (this Court lacks appellate jurisdiction when notice of appeal is untimely); see, e.g., Jones v. Estelle, 693 F.2d 547, 549 (5th Cir. 1982) (case dismissed for lack of jurisdiction where habeas petitioner failed to file notice of appeal until 13 months after entry of judgment), cert. denied, 460 U.S. 1072 (1983).

The district court clerk was required to serve Blanchard with notice of the entry of the denial by mail immediately upon its entry. FED. R. CIV. P. 77(d). Nevertheless, "[l]ack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure." Id.; see also Latham v. Wells Fargo Bank, 987 F.2d 1199, 1201 (5th Cir. 1993). In short, a party must inquire periodically into the status of his litigation, and a timely appeal must be made regardless of whether timely notice of the entry of the judgment has been received. See Latham, 987 F.2d at 1201.

Rule 4(a)(6) of the appellate rules provides:

> The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of the receipt of such notice, whichever is earlier, reopen the time for appeal for 14 days from the date of entry of the order reopening the time for appeal.

FED. R. APP. P. 4(a)(6). In Blanchard's case, the 180 days passed earlier; therefore, Rule 4(a)(6) provides him no relief. See

Latham, 987 F.2d at 1202. The relief available in Rule 4(a)(5) is also foreclosed, as the 30-day limit of that rule was breached by Blanchard's 16-month period of respite. See FED. R. APP. P. 4(a)(5). Blanchard's appeal is DISMISSED for lack of appellate jurisdiction. See Jones, 693 F.2d at 549.

Blanchard's motion for the appointment of counsel on appeal is DENIED. Schwander v. Blackburn, 750 F.2d 494, 502 (5th Cir. 1985).