

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40060  
Summary Calendar

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KENNETH LEONARD,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden,  
Louisiana State Penitentiary,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 93-0003

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(May 5, 1994)

Before JOHNSON, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:<sup>1</sup>

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). Rule 4(a)(1), Fed. R. App. P., requires that the notice of appeal in a civil action be filed within 30 days of entry of the judgment or order from which appeal is taken. In this habeas corpus action, the final judgment was entered on November 19, 1993. Therefore,

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the final day for filing a timely notice of appeal was Monday, December 20, 1993, because the thirtieth day was a Sunday. See Fed. R. App. P. 26(a). Petitioner's pro se notice of appeal is stamped as filed on January 12, 1994. The notice is undated and there is no indication from the record that it was deposited in the prison mail system within the prescribed time. See Fed. R. App. P. 4(c) (a prisoner's pro se notice of appeal is deemed timely filed if deposited in the institution's internal mail system on or before the last day for filing). The time limitation for filing a notice of appeal is jurisdictional, and the lack of a timely notice mandates dismissal of the appeal. Robbins v. Maggio, 750 F.2d 405, 408 (5th Cir. 1985).

APPEAL DISMISSED.

Leonard's application for a certificate of probable cause to appeal is DENIED as moot.