

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-41015
Summary Calendar

MICHAEL MCKINLEY,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:95-CV-104
- - - - -

January 10, 1997

Before JONES, DeMOSS and PARKER, Circuit Judges.

PER CURIAM:*

Michael McKinley appeals from the district court's denial of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondent has filed a motion to dismiss McKinley's appeal as untimely filed. As the district court's judgment denying McKinley's habeas application was entered on October 31, 1995, and McKinley's notice of appeal was not filed until

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

December 13, 1995, his notice of appeal is untimely. See Fed. R. App. P. 4(a)(1). Because a timely notice of appeal is a mandatory precondition to the exercise of appellate jurisdiction, the respondent's motion to dismiss is GRANTED and McKinley's appeal is DISMISSED. See United States v. Garcia-Manchado, 845 F.2d 492, 493 (5th Cir. 1988).