

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30814
Summary Calendar

HERMAN JOHNSON, JR.,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden,
Louisiana State Penitentiary;
RICHARD P. IEYOUB, Attorney General,
State of Louisiana,

Respondents-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 94-CV-3980-E
- - - - -

December 19, 1996

Before GARWOOD, JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Herman Johnson, Jr., Louisiana state prisoner #121967, appeals from the district court's dismissal of his petition for writ of habeas corpus. He has filed a motion with this court to proceed in forma pauperis (IFP) on appeal. This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Cir. 1987). Johnson did not file a notice of appeal from the district court's denial of his habeas petition. Although he refiled his original § 2254 petition one year after the court's judgment, his habeas petition is ineffective to serve as a notice of appeal because it did not "clearly evince an intent to appeal." See id.

To the extent that any documents subsequently filed by Johnson evince an intent to appeal, they are untimely as they were filed more than thirty days after the district court's entry of final judgment. See Fed. R. App. P. 4(a)(1). A timely notice of appeal is a prerequisite for the exercise of jurisdiction by this court. United States v. Carr, 979 F.2d 51, 55 (5th Cir. 1992).

Because Johnson did not file a timely notice of appeal, this court lacks appellate jurisdiction. Johnson's motion for IFP is therefore DENIED as unnecessary and his appeal is DISMISSED.