

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10357
Summary Calendar

DAVID LOPEZ,

Plaintiff-Appellant,

versus

TEXAS DEP'T OF CRIMINAL JUSTICE, ET AL.,

Defendants,

TEXAS DEP'T OF CRIMINAL JUSTICE; TEXAS STATE OF;
C. BELL, Warden,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:96-CV-242
- - - - -

September 24, 1997

Before JOLLY, BENAVIDES and PARKER, Circuit Judges.

PER CURIAM:*

This court must examine the basis of its own jurisdiction on its own motion, if necessary.

Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). The document which has been construed as a notice of appeal in this case, district court docket number 41, primarily sought reconsideration of the district court's order and judgment of dismissal. Because the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

document did not clearly evince the litigant's intent to appeal, it cannot serve as a valid notice of appeal. See id.

Apparently, document number 41 was filed within 10 days of entry of the magistrate judge's order and judgment. See Houston v. Lack, 487 U.S. 266, 276 (1988). If so, it should be regarded as a motion under Fed. R. Civ. P. 59(e). Because the district court has not disposed of the Rule 59(e) motion, and because there is no other document in the record which could serve as a notice of appeal from that judgment, the court does not have jurisdiction.

APPEAL DISMISSED.