

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-31087  
Conference Calendar

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EDRICK JENKINS,

Petitioner-Appellant,

versus

BURL CAIN, 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. 97-CV-1062  
- - - - -

February 10, 1998

Before SMITH, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Edrick Jenkins, Texas prisoner # 99089, appeals the district court's dismissal of his habeas application. 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. However, "[i]f an inmate confined in an institution files a notice of appeal in

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

either a civil case or a criminal case, the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day of filing." FED. R. APP. P. 4(c).

The district court entered final judgment on July 7, 1997. Therefore, the final day for filing a timely notice of appeal was Wednesday, August 6, 1997. Jenkins's application for a certificate of appealability (COA) is construed as a notice of appeal under *Stevens v. Heard*, 674 F.2d 320, 323 (5th Cir. 1982). The COA application is dated August 13, 1997, and it was not filed into the court record until August 20, 1997.

The time limitation for filing a notice of appeal is jurisdictional, and the lack of a timely notice of appeal mandates dismissal of the appeal. *Robbins v. Maggio*, 750 F.2d 405, 408 (5th Cir. 1985). As Jenkins did not file a timely notice of appeal, the appeal is DISMISSED.

APPEAL DISMISSED.