

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20906
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH SHANE MASSERANO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-92-CR-225-1
- - - - -

June 24, 1999

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

PER CURIAM:*

Joseph Shane Masserano, Texas prisoner # 60109-079, appeals the district court's Order of Dismissal denying his Motion to Dismiss for lack of jurisdiction and the court's denial of his Motion for Reconsideration.

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). An examination of the record in this case discloses

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that no final judgment has been entered as a separate document as required by FED. R. CIV. P. 58.

In an order entered on June 18, 1998, the district court granted the Government's motion to dismiss and denied Masserano's motion to dismiss. Thereafter, on July 17, 1998, Masserano filed a motion for reconsideration. On September 4, 1998, the district court entered an order denying the motion for reconsideration. On September 16, 1998, Masserano filed a motion to proceed in forma pauperis on appeal and on October 1, 1998, he filed a notice of appeal.

If we were to treat the June 18th order as a Rule 58 judgment, Masserano's notice of appeal would be untimely because it was filed more than 60 days after entry of the order of dismissal. See FED. R. APP. P. 4(a)(1)(B); Baker v. Mercedes Benz of North America, 114 F.3d 57, 61 (5th Cir. 1997). Therefore, we DISMISS the appeal. See Townsend v. Lucas, 745 F.2d 933, 934 (5th Cir. 1984).

Masserano may rectify the lack of a separate document judgment by a motion to the district court for entry of judgment. After entry of the judgment, he may appeal within the time prescribed by Rule 4(a)(1)(B).

APPEAL DISMISSED.