

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 15, 2021

Lyle W. Cayce
Clerk

No. 21-60628

BRANDON P. SMITH,

Petitioner—Appellant,

versus

STATE OF MISSISSIPPI,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:19-CV-122

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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thirty days of entry of judgment. A prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing. *See* FED. R. APP. P. 4(c)(1).

In this habeas corpus case, the final judgment denying the petition was entered December 6, 2019. The order granting in part and denying in part petitioner's motion for reconsideration was entered June 5, 2020. Therefore, the final day for filing a timely notice of appeal was Monday, July 6, 2020, because the thirtieth day was a Sunday. *See* FED. R. APP. P. 26(a)(1)(C).

The petitioner's pro se notice of appeal is not dated. It was filed on August 11, 2021, more than a year after the final date for a timely appeal. As it cannot be determined from the record in this case whether the petitioner delivered the notice of appeal to prison officials for mailing on or before July 6, 2020, the case must be remanded for the district court to make this determination in the first instance. *See Thompson v. Montgomery*, 853 F.2d 287, 288 (5th Cir. 1988) (per curiam). Upon making this determination, the district court shall return the case to this court for further proceedings, or dismissal, as may be appropriate.

REMANDED for proceedings consistent with this opinion.