

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 16, 2009
Elisabeth A. Shumaker
Clerk of Court

RICHARD P. MEYERS,

Petitioner - Appellant,

v.

MICHAEL MURPHY, Warden,
Wyoming Department of Corrections,

Respondent - Appellee.

No. 09-8094
(D.C. No. 2:08-CV-00079-ABJ)
(D. Wyoming)

ORDER

Before **KELLY, TYMKOVICH, and GORSUCH**, Circuit Judges.

Richard P. Meyers entered a plea of nolo contendere to attempted voluntary manslaughter in a Wyoming state court and was sentenced. He ultimately filed a habeas petition in the U.S. District Court for the District of Wyoming, seeking relief from the state conviction pursuant to 28 U.S.C. § 2254. The district court found no merit to Mr. Meyers's habeas claims. The case was dismissed by order entered September 30, 2009. A separate judgment was entered that same day. The district court also denied a certificate of appealability.

Mr. Meyers filed a notice of appeal from that judgment on November 10, 2009. In the ordinary course, this appeal was opened.

As explained to Mr. Meyers in the show cause order issued by this court, the notice of appeal was due within 30 days from the date of the judgment. Fed. R. App. P. 4(a)(1)(A). Therefore, the notice of appeal was due October 30, 2009. By his own admission in the certificate of service, the notice of appeal was not even placed in the prison mail system until November 9, 2009.

In his response to this court's show cause order, Mr. Meyers asserts in summary: (1) that he mistakenly calculated the due date by not including weekends in the 30 day period; (2) that he had trouble accessing law books during the time period at issue; (3) that the district court did not advise him about the method for counting days under the rules; (4) that his mistake is excusable; and (5) that a district court may grant an extension of time within which to file a notice of appeal.

As to this last point, the court notes that Mr. Meyers did not file a motion in the district court seeking an extension of time to file a notice of appeal. Federal Rule of Appellate Procedure 4(a)(5) expressly states that a "district court may extend the time to file a notice of appeal" if the conditions therein are met (emphasis added). This court is not permitted to extend the time for the filing of a notice of appeal, only the district court is authorized to do that. Fed. R. App. P. 26(b)(1); Brumark Corp. v. Samson Resources Corp., 57 F.3d 941, 949 (10th Cir. 1995).

As to the other points expressly stated or that could reasonably be inferred from Mr. Meyers's response, although this court construes a pro se litigant's pleadings liberally, "an appellant's pro se status does not excuse the obligation of any litigant to

comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.” Ogden v. San Juan County, 32 F.3d 452, 455 (10th Cir. 1994). Further, the United States Supreme Court has held that in civil cases such as this, the failure to file a timely notice of appeal deprives the circuit court of appellate jurisdiction. Bowles v. Russell, 127 S. Ct. 2360 (2007).

For the foregoing reasons, this appeal is dismissed.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court



by:
Douglas E. Cressler
Chief Deputy Clerk