

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 1, 2013

Elisabeth A. Shumaker
Clerk of Court

JUSTIN PRUITT,

Petitioner - Appellant,

v.

JAY SHELTON, Warden; ATTORNEY
GENERAL OF THE STATE OF
KANSAS,

Respondents - Appellees.

No. 13-3012
(D.C. No. 5:11-CV-03116-SAC)

ORDER

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

Mr. Pruitt seeks to appeal from the district court's November 28, 2012 denial of his 28 U.S.C. § 2254 habeas petition. Based upon Mr. Pruitt's response to this court's order of January 11, 2013, and based upon a review of the file as a whole, the court concludes that this appeal is untimely.

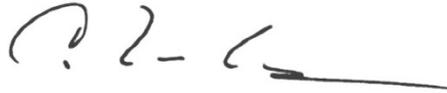
Pursuant to Fed. R. App. P. 4(a)(1)(A) (30 days for filing a notice of appeal in a civil case), Mr. Pruitt's notice of appeal was due on or before December 28, 2012. It was not filed until January 10, 2013. Mr. Pruitt has failed to show that anything that could be construed as a notice of appeal was filed (or mailed in compliance with the prison mailbox rule - Fed. R. App. P. 4 (c)) on or before the December 28, 2012 due date. He did not request an extension of time from the district court to file his notice of appeal and

this court cannot grant such an extension. *See* Fed. R. App. P. 4 (a)(5) and *Alva v. Teen Help*, 469 F.3d 946, 950 (10th Cir. 2006) (court of appeals lacks authority to find excusable neglect and extend the time for filing notice of appeal; only the district court may do so).

Because the notice of appeal was untimely, this court lacks jurisdiction to consider this appeal. *Bowles v. Russell*, 551 U.S. 205 (2007).

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read 'Christine Van Coney', with a long horizontal line extending to the right.

by: Christine Van Coney
Counsel to the Clerk