

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 22, 2013

**Elisabeth A. Shumaker
Clerk of Court**

DOUGLAS DWAYNE MILLER,

Petitioner - Appellant,

v.

JIM FARRIS, Warden,

Respondent - Appellee.

No. 13-5087
(D.C. No. 4:10-CV-00469-TCK-FHM)

ORDER

Before **BRISCOE**, Chief Judge; **LUCERO** and **HARTZ**, Circuit Judges.

Mr. Miller seeks to appeal from the district court's May 16, 2013 denial of his 28 U.S.C. § 2254 habeas petition. Based upon Mr. Miller's response to this court's order of July 12, 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. Miller's notice of appeal was due on or before June 17, 2013. It was not filed until July 5, 2013. Mr. Miller 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 'C. Van Coney', with a long horizontal line extending to the right.

by: Christine Van Coney
Counsel to the Clerk