

UNITED STATES COURT OF APPEALS

July 28, 2014

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

LAVERN BERRYHILL,

Plaintiff - Appellant,

v.

No. 14-6156
(D.C. No. 5:10-CV-00802-HE)

VICKI MILES LAGRANGE, U.S. District Judge; LEE R. WEST, District Director, U.S. District Judge; ROBIN CAUTHRON, District Director, U.S. District Judge; TIMOTHY D. DEGIUSTI, U.S. District Judge; DAVID L. RUSSELL, U.S. District Judge; STEPHEN P. FRIOT; GARY M. PURCELL, U.S. Magistrate Judge; RALPH G THOMPSON, Former U.S. District Judge; BRAD HENRY, Governor of Oklahoma; JARI ASKINS, Lt Governor of Oklahoma; DREW EDMONDSON, Attorney General; KIM RITTER, Asst Ag; DIANE L. SLAYTON, Asst Ag; OKLAHOMA SUPREME COURT JUSTICES; OKLAHOMA COURT OF CRIMINAL APPEALS JUDGES; UNITED STATES DISTRICT JUDGES EASTERN DISTRICT OF OKLAHOMA; TENTH CIRCUIT DISTRICT JUDGES; JOHN C. RICHTER, U.S. Atty; ROBERT G. MCCAMPBELL, Former U.S. Atty; ROZIA MCKINNEY FOSTER, Asst U.S. Atty; KERRY KELLY, Asst U.S. Atty; LINDA A. EPPERLEY, Asst U.S. Atty EDO; CHRISTY EVEREST, CEO OPUBCO; OKLAHOMA PUBLISHING COMPANY; DON POPE, Atty; DAVID MILLER, Warden; GEORGE C. ZOOLEY, CEO, GEO Group Inc; GEO GROUP, INC.; GEO GROUP INC BOARD MEMBERS; DARELL MOORE, Atty; CORRECTIONS

CORPORATION OF AMERICA;
CORRECTIONS CORPORATION OF
AMERICA CEO; CORRECTIONS
CORPORATION OF AMERICA
BOARD MEMBERS; DAVID PRATER,
DA OK Co; VIRGIL BLACK, District
Judge, OK Co; MEMBERS OF THE
CORRECTIONS BOARD; JUSTIN
JONES, Director, DOC; BOBBY
BOONE, Deputy Director, DOC;
WARDEN RANDALL G. WORKMAN;
JOHN DOE, Two Unknown Secret
Service Agents; JILL TSIAKILOS, Asst
AG,

Defendants - Appellees.

ORDER

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

We raise *sua sponte* the question of whether this Court has jurisdiction to consider this appeal. LaVern Berryhill, who is proceeding *pro se*, seeks to appeal – for the second time – the order entered by the United States District Court for the Western District of Oklahoma dismissing his case for failure to pay the filing fee.

The timely filing of a notice of appeal is both mandatory and jurisdictional. *Bowles v. Russell*, 551 U.S. 205, 214 (2007). When the United States or one of its agencies, officers or employees is a party to a civil suit, the notice of appeal must be filed “within 60 days after the entry of the judgment or order appealed from....” Fed. R. App. P. 4(a)(1)(B). The district court entered its order dismissing Mr. Berryhill’s case on October 25, 2010. Because the district court did not enter a separate Rule 58 judgment, judgment

Fed. R. App. P. 4(b)(1)(B), Mr. Berryhill's notice of appeal was due on or before May 23, 2011. It was not filed until July 25, 2014, over three years after the filing deadline expired.

Although Mr. Berryhill states in his notice of appeal that he did not receive "a final order attached to a judgment disposing of this [his] case," he has not asked the district court to reopen the time to appeal. Further, Mr. Berryhill previously appealed the same October 25, 2010 dismissal order. Like the underlying § 1983 case, Mr. Berryhill's prior appeal was dismissed for lack of prosecution and failure to pay the filing fee. *Berryhill v. LaGrange*, No. 10-6271 (10th Cir. Jan. 1, 2011).

Because Mr. Berryhill's notice of appeal was untimely, we lack jurisdiction to consider this appeal. In addition, Mr. Berryhill is not entitled to two appeals of the same district court order. Accordingly, this appeal is dismissed.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk



by: Chris Wolpert

Chief Deputy Clerk