

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 24, 2014

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

LAVERN BERRYHILL,

Petitioner - Appellant,

v.

ANITA TRAMMELL, Warden,

Respondent - Appellee.

No. 14-7042
(D.C. No. 6:12-CV-00400-RAW-KEW)

ORDER

Before **HARTZ**, **GORSUCH**, and **PHILLIPS**, Circuit Judges.

Mr. Berryhill seeks to appeal from the district court’s March 6, 2014 dismissal of his 28 U.S.C. § 2241 habeas proceeding. Based upon Mr. Berryhill’s response to this court’s order of May 28, 2014, and based upon a review of the file as a whole, the court concludes that this appeal is untimely.

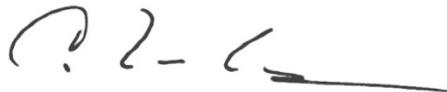
Pursuant to Fed. R. App. P. 4(a)(1)(A) (30 days for filing a notice of appeal in a civil case), Mr. Berryhill’s notice of appeal was due on or before April 7, 2014. *See Jenkins v. Burtzloff*, 69 F. 3d 460, 461-62 (10th Cir. 1995) (time for appeal begins to run when the judgment or order is entered – not when it is received). It was not filed until May 20, 2014. Mr. Berryhill has failed to demonstrate that his notice of appeal can be considered timely under the prison mailbox rule. Fed. R. App. P. 4 (c) (1). 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). We note that, to the extent Mr. Berryhill is seeking to appeal from the district court's April 7, 2014 minute order denying his Rule 60 (b) motion, his appeal would still be untimely.

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



by: Christine Van Coney
Counsel to the Clerk