

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30030
Summary Calendar

CLARENCE STEWART, JR.,

Plaintiff-Appellant,

versus

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

Appeal from the United States District Court
For the Middle District of Louisiana
(96-3431-A-1)

August 25, 1997

Before POLITZ, Chief Judge, JOLLY and STEWART, Circuit Judges.

POLITZ, Chief Judge:*

Clarence Stewart, Jr., a Louisiana prisoner, filed a civil rights complaint under 42 U.S.C. § 1983 against the Louisiana Department of Corrections, Warden Burl Cain, Lt. Willie Thomas, and Sgt. Gerald Scott, alleging that they refused to

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

retrieve his radio from another inmate who had stolen it, ignored his request for emergency medical assistance, and wrote him up for “unsanitary practice” after the other inmate threw human waste on him. The district court dismissed the complaint on two grounds: (1) failure to exhaust administrative remedies, and (2) frivolous under 28 U.S.C. § 1915(e).

The judgment of dismissal was entered November 5, 1996. Stewart’s notice of appeal was filed December 16, 1996. The record is devoid of any explanation or proof why the notice of appeal, which was filed well outside the 30 days allowed, should be deemed timely.¹ The time limitation for filing a notice of appeal is jurisdictional, and the lack of a timely notice mandates our dismissal of the appeal.²

By virtue of this disposition, the motions filed by Stewart are mooted and they are DENIED.

APPEAL DISMISSED.

¹ See Fed.R.App.P. 4(c).

² **Robins v. Maggio**, 750 F.2d 405 (5th Cir. 1985).