

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 97-40478  
Conference Calendar

---

DONALD R. SMITH,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, INSTITUTIONAL DIVISION;  
MICHAEL A. WILSON, Senior Warden,  
Michael Unit; DIRECTOR'S REVIEW  
COMMITTEE, Texas Department of  
Criminal Justice,

Defendants-Appellees.

- - - - -  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:96-CV-925  
- - - - -

December 9, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Donald R. Smith, Texas prisoner # 669727, appeals from dismissal of his 42 U.S.C. § 1983 complaint as frivolous under 28 U.S.C. § 1915 and the denial of his second "motion for reconsideration."

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Smith's notice of appeal from the dismissal of his § 1983 complaint is not timely because it was filed more than thirty days after the denial of the Rule 59(e) motion. Fed. R. Civ. P. 4(a)(1), 59(e); Gribble v. Harris, 625 F.2d 1173, 1174 (5th Cir. 1980).

Although the notice of appeal was timely from the district court's denial of his second "motion for reconsideration," that motion is not an authorized motion. The motion challenges the district court's denial of his Rule 59(e) motion. "Rule 4(a)(4) does not embrace a second Fed. R. Civ. P. 59(e) motion." See United States v. One 1988 Dodge Pickup, 959 F.2d 37, 39 (5th Cir. 1992). Accordingly, the appeal is DISMISSED.