

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2018

Lyle W. Cayce
Clerk

No. 17-60638
Summary Calendar

CORDELLRA MCCALEY,

Plaintiff-Appellant

v.

PELICIA HALL, COMMISSIONER, MISSISSIPPI DEPARTMENT OF
CORRECTIONS; JERRY WILLIAMS, Deputy Commissioner; TIMOTHY
MORRIS, Warden, Mississippi Department of Corrections; OFFICER
HUGHES, Correction Officer; M. S. CARTER, Case Manager; MR. BANKS,
Deputy Warden,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:16-CV-111

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Cordellra McCaley, Mississippi prisoner # 164032, appeals the summary judgment dismissal of his 42 U.S.C. § 1983 civil rights action alleging claims of deliberate indifference to his safety, deliberate indifference to his serious medical needs, and failure to properly classify him based on the defendants'

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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actions before and after McCaley was assaulted and seriously injured by another inmate. McCaley also moves for appointment of counsel on appeal.

“This Court must examine the basis of its jurisdiction, on its own motion, if necessary.” *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). An appellate court’s jurisdiction vests upon filing of the notice of appeal. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). “[A]n appeal filing deadline prescribed by statute will be regarded as jurisdictional.” *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 16 (2017) (internal quotation marks and citation omitted). In a civil matter, such as this one, notice of appeal must be filed within 30 days of the entry of the judgment or order being appealed. 28 U.S.C. § 2107(a); FED. R. APP. P. 4(a)(1)(A).

Although McCaley’s notice of appeal was filed more than four months after the Rule 4(a) deadline, we construe it as a timely motion to reopen the appeal filing period. *See* § 2107(c); FED. R. APP. P. 4(a)(6). Accordingly, IT IS ORDERED that the case be REMANDED to the district court for the limited purpose of determining whether McCaley’s appeal should be reopened pursuant to Rule 4(a)(6). The district court is directed to return the case to this court for further proceedings or dismissal, as appropriate, once the ruling has been made. McCaley’s motion to appoint counsel is CARRIED WITH THE CASE.

LIMITED REMAND ORDERED.