

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 30, 2023*

Decided July 10, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2344

JUSTIN RYAN SLOVER,
Plaintiff-Appellant,

v.

RONALD SCHILDMEIER,
Defendant-Appellee.

} Appeal from the United
States District Court for the
Southern District of Indiana,
Indianapolis Division.

} No. 1:21-cv-00166-JMS-MPB

} Jane Magnus-Stinson, *Judge.*

ORDER

Justin Slover contends in this suit under 42 U.S.C. §1983 that Ronald Schildmeier, a guard at his prison, used constitutionally excessive force. After reviewing a video of the encounter, the district judge concluded that reasonable jurors could not decide in Slover's favor and granted summary judgment to Schildmeier. 2022 U.S. Dist. LEXIS 137477 (S.D. Ind. June 24, 2022). Judgment was entered the same day.

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. See Fed. R. App. P. 34(a); Cir. R. 34(f).

Slover had 30 days to appeal, or until July 24, 2022. That date was a Sunday, so the deadline became July 25. See Fed. R. App. P. 26(a). The district court received Slover’s notice of appeal on July 28.

Because Slover was then in prison, the prison-mailbox rule (Fed. R. App. P. 4(c)(1)) applied to him. This rule gave him three ways to show that he mailed the notice of appeal on or before July 25: a contemporaneous declaration qualifying under 28 U.S.C. §1746 or notarized statement recording the date the document was mailed and the use of first-class postage (Rule 4(c)(1)(A)(i)); evidence such as a postmark showing when the envelope, with postage, was deposited in the mail (Rule 4(c)(1)(A)(ii)); or at the court of appeals’ discretion the later provision of a qualifying declaration or notarized statement that satisfies the first of these options (Rule 4(c)(1)(B)). None of these ways helps him.

The notice of appeal was not accompanied by a declaration or notarized statement. It does not bear a postmark that would show its timely deposit in the mail. And Slover has not filed in this court a qualifying declaration or notarized statement. Slover’s second docketing statement includes a statement from a state official that the prison had “a mailing to the U.S. District Court” on July 25, but neither Slover nor anyone employed by the prison has described what was in that mailing—and at all events the statement is not notarized and does not qualify as a declaration under 28 U.S.C. §1746.

Instead of using any of the avenues specified by Rule 4(c)(1), Slover asked the district court to extend the time for appeal, which a judge can do for good cause or excusable neglect—provided the request is made within 30 days of the time that the window for appeal otherwise closes. 28 U.S.C. §2107(c); Fed. R. App. P. 4(a)(5)(A)(ii). In this case, the deadline for such a motion was August 24, 2022, but Slover did not seek an extension until October 13, 2022. The district judge entered an order granting the requested extension but did not explain how she possessed the power to do so, given the time limit in both the statute and the rule. The district court’s order therefore is ineffectual.

Even if the time limit for an application is not strictly jurisdictional—though *Nesstorovic v. Metropolitan Water Reclamation District*, 926 F.3d 427, 431 (7th Cir. 2019), holds that it is—it remains a mandatory claims-processing rule, which we must enforce if a litigant invokes the rule’s benefit. Schildmeier has asked us to dismiss the appeal as untimely, and we must do so.

The appeal is dismissed for want of jurisdiction.