

JUN 18 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL WEBB,

Petitioner - Appellant,

v.

D. K. SISTO, Warden; EDMUND G.
BROWN, Jr.,

Respondents - Appellees.

No. 08-17003

D.C. No. 2:07-cv-01879-FCD-
DAD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Senior United States District Judge, Presiding

Submitted June 16, 2010**
San Francisco, California

Before: SCHROEDER and BYBEE, Circuit Judges, and STOTLER, District
Judge.***

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Alicemarie Stotler, Senior United States District Judge for the Central District of California, sitting by designation.

Petitioner Michael Webb appeals the order of the district court denying his petition for a writ of habeas corpus. Webb concedes that he filed his notice of appeal thirty-one days after the district court entered judgment. A notice of appeal in a civil case “must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.” Fed R. App. P. 4(a)(1)(A). “An appeal from a denial of habeas petition is considered a ‘civil’ matter and is thus subject to the time limitations set forth in rule 4(a)” of the Federal Rules of Appellate Procedure. *Malone v. Avenenti*, 850 F.2d 569, 571 (9th Cir. 1988). Rule 4(a) “is both mandatory and jurisdictional” because “Congress . . . specifically limited our jurisdiction to hear civil appeals at 28 U.S.C. § 2107(a), which codifies the same time constraints on the filing of civil appeals . . . that exist in Rule 4(a).” *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (emphasis removed). We “must dismiss civil appeals that are untimely for lack of jurisdiction” *Id.*

DISMISSED.