

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13836

Non-Argument Calendar

JUSTIN LASTER,

Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF CORRECTIONS,
MACON STATE PRISON,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:21-cv-00464-TES

Before JILL PRYOR, LUCK, and KIDD, Circuit Judges.

PER CURIAM:

On November 22, 2024, Justin Laster, proceeding *pro se*, filed a notice of appeal from the district court's September 24, 2024, order and September 25, 2024, judgment granting summary judgment in favor of the defendants. We issued jurisdictional questions ("JQs") in this appeal asking the parties to address whether Laster's November 22, 2024, notice of appeal was timely, and if not, whether it should be construed as a motion to reopen the time to appeal under Federal Rule of Appellate Procedure 4(a)(6).

On October 30, 2024, prior to filing his notice of appeal, Laster filed a motion for recusal directly with us challenging the same order and judgment designated in his present notice of appeal. We construed that *pro se* motion as a petition for writ of mandamus, resulting in appeal number 24-13591. We denied Laster leave to proceed *in forma pauperis*, and ultimately dismissed appeal number 24-13591 for want of prosecution.

After considering the record and the parties' responses to our JQs, we vacate the dismissal of appeal number 24-13591 and construe Laster's motion for recusal as a notice of appeal from the district court's September 24, 2024, order and September 25, 2024, judgment.

Laster's construed notice of appeal, filed on October 30, 2024, is untimely to challenge the district court's order and

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judgment, because it was not filed within 30 days of their entry. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). However, Laster alleged in his construed notice of appeal that he did not receive notice of the order and judgment until October 27, 2024. Thus, we construe Laster’s motion for recusal both as a notice of appeal and as a motion to reopen the appeal period under Rule 4(a)(6), and we remand to the district court to consider Laster’s entitlement to relief under that provision. *See Sanders v. United States*, 113 F.3d 184, 186-87 (11th Cir. 1997) (holding that when a *pro se* appellant alleges that he did not receive a judgment or order within twenty-one days of its entry, we treat the notice of appeal as a Rule 4(a)(6) motion and remand to the district court to determine whether relief under that Rule is warranted).

We dismiss the instant appeal, opened by Laster’s November 22, 2024, notice of appeal, for two independent reasons. First, in light of our construction of Laster’s motion for recusal as a notice of appeal from the district court’s order and judgment, Laster’s November 22 notice of appeal is duplicative, because it seeks to challenge the same order and judgment. *See Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981) (holding that a party “must ordinarily raise all claims of error in a single appeal following judgment on the merits”). Second, Laster’s November 22 notice of appeal is untimely, because it was not filed within 30 days of the district court’s order and judgment. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). And while Laster alleged in that notice of appeal that he failed to receive timely notice of the order and judgment, that notice cannot be construed as a Rule 4(a)(6) motion, because it was

filed more than 14 days after he received notice of the order and judgment on October 27, 2024. *See* Fed. R. App. P. 4(a)(6) (providing that a motion for relief under this Rule must be filed within 14 days after the moving party receives notice of the order or judgment he seeks to appeal).

Accordingly, we hereby VACATE our dismissal of appeal number 24-13591 and construe Laster's *pro se* motion for recusal as a notice of appeal from the district court's September 24, 2024 order and September 25, 2024 judgment. Further, we REMAND appeal number 24-13591 to the district court for the limited purpose of determining whether Laster is entitled to relief under Rule 4(a)(6). The Clerk of this Court is DIRECTED to docket a copy of this opinion in appeal number 24-13591. Lastly, we DISMISS the instant appeal as untimely and duplicative. Any pending motions in this appeal are DENIED AS MOOT.