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FEDERAL APPELLATE TIMING REQUIREMENTS FOR FILING A NOTICE OF APPEAL ARE JURISDICTIONAL

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In a 5-4 decision, the United States Supreme Court has held that reliance on a deadline date for filing a notice of appeal set by a district court order that was beyond the allowed federal statutory deadline date for filing is not sufficient to establish appellate court jurisdiction.

In *Bowles v Russell*, 551 U.S. ___ (June 14, 2007), Keith Bowles was convicted of murder and sentenced accordingly. After unsuccessfully challenging his conviction and sentence on direct appeal, Bowles sought habeas corpus relief. The district court denied the request on Sept. 9, 2003.

Bowles did not file his notice of appeal from the habeas decision within the 30-day deadline set forth in Federal Rule of Appellate Procedure 4(a)(1)(A) and 28 U.S.C. § 2107(a). Bowles moved to reopen the notice of appeal filing period under Fed. R. App. Proc. 4(a)(6) and 28 U.S.C. § 2107(c), which allows the district court to extend the notice of appeal filing period 14 days from the date the district court grants the reopen motion.

The district court granted Bowles' motion to reopen and gave him 17 days, not the 14 days prescribed by court rule and federal statute, to file the notice of appeal. Bowles filed his notice of appeal on the 16th day of the district court ordered 17-day period.

The United States Court of Appeals for the Sixth Circuit dismissed the appeal for lack of jurisdiction.

The Supreme Court affirmed. In so doing, the court reiterated the long-standing rule that statutory time limits for taking an appeal are treated as jurisdictional. The court also provided policy reasons for its decision, noting jurisdictional treatment of statutory time limits makes "good sense." The court explained that because Congress decides what cases the federal courts have jurisdiction to consider, it can also decide when the federal courts can hear them.



The court also rejected Bowles' reliance on the "unique circumstances" doctrine because it is an equitable exception and the court does not have authority to create equitable exceptions to jurisdictional requirements.

The court concluded that Bowles' failure to file his notice of appeal in accordance with the statutorily mandated 14-day extension period deprived the Sixth Circuit of jurisdiction because Congress, through that statute, specifically limited the amount of time that the district court can extend the notice period.

This decision reflects the most recent in a series of decisions in which the Supreme Court has tightened appellate jurisdictional requirements. Even if a district court mistakenly grants additional time, a late notice of appeal will not result in jurisdiction. The district court's mistake will be held against a litigant who relies upon it. Therefore, litigants will want to consult knowledgeable appellate lawyers regarding time requirements to ensure that appeals are pursued in accordance with jurisdictional requirements.

For a complete copy of the United State Supreme Court's decision on *Bowles v Russell*, [click here](#).

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