

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 05-2893

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Gregory Lynn Wade,

Appellant,

v.

Kurt Kester, Officer; Greg  
Wallace; Tim Stenge; Noble County,

Appellees.

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\* Appeal from the United States  
\* District Court for the  
\* District of Minnesota.  
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\* [UNPUBLISHED]  
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Submitted: December 27, 2006  
Filed: December 28, 2006

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Before SMITH, MAGILL, and BENTON, Circuit Judges.

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PER CURIAM.

Minnesota inmate Gregory Wade seeks to appeal from the district court's<sup>1</sup> dismissal of his 42 U.S.C. § 1983 action. Having carefully reviewed the record, we find that Wade's notice of appeal (NOA) was untimely by one day because he filed it on April 1, 31 days after the district court entered judgment on March 1, 2005. *See*

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<sup>1</sup>The Honorable James M. Rosenbaum, Chief Judge, United States District Court for the District of Minnesota, adopting the report and recommendations of the Honorable Janie S. Mayeron, United States Magistrate Judge for the District of Minnesota.

Fed. R. App. P. 4(a)(1)(A) (NOA must be filed within 30 days after judgment or order appealed from is entered), 4(c)(1) (prison-mailbox rule). Accordingly, we dismiss the appeal as untimely. *See Krein v. Norris*, 250 F.3d 1184, 1187 (8th Cir. 2001) (jurisdiction will be raised sua sponte when there is indication it is lacking, even if parties concede issue); *Burgs v. Johnson County, Iowa*, 79 F.3d 701, 702 (8th Cir. 1996) (per curiam) (timely NOA is jurisdictional). We also deny Wade's motion for appellate counsel.

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