

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 15, 2016

Elisabeth A. Shumaker
Clerk of Court

BRYAN KRUMM,

Petitioner,

v.

No. 16-9557

DRUG ENFORCEMENT AGENCY
(DEA),

Respondent.

ORDER

This matter is before the court *sua sponte* following a review of pro se Petitioner Bryan Krumm's petition for review seeking review of the Drug Enforcement Administration's (DEA) denial of his petition to initiate proceedings to reschedule marijuana. We have identified potential jurisdictional defects discussed below and are considering the matter for summary disposition. *See* 10th Cir. R. 27.3(B). The briefing schedule is suspended pending further order of the court. *See* 10th Cir. R. 27.3(C).

It appears that the petition for review is untimely. Federal Rule of Appellate Procedure 15(a) provides that petitions for review of agency decisions must be filed with the clerk of the appropriate court of appeals "within the time prescribed by law." 21 U.S.C. § 877 sets forth the procedures for obtaining judicial review of DEA decisions and provides that a petition for review must be filed "within 30 days after notice of the decision." Publication of a decision in the Federal Register constitutes constructive notice

of the order. *Yakus v. United States*, 321 U.S. 414, 435 (1944). The DEA's decision was published in the Federal Register on August 12, 2016. Mr. Krumm filed the petition for review on November 8, 2016, which is beyond the statutory 30-day period. There is "longstanding treatment of statutory time limits for taking an appeal as jurisdictional." *Bowles v. Russell*, 551 U.S. 205, 210 (2007).

In addition, it is unclear that this is the proper circuit in which to seek review. 21 U.S.C. § 877 provides that review may be obtained in the United States District Court for the District of Columbia or in the circuit in which an aggrieved party's principal place of business is located. It is unclear whether or where Mr. Krumm has a principal place of business.

Although the court construes a pro se litigant's pleadings liberally, a litigant's "pro se status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of . . . Appellate Procedure." *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

Within 14 days from the date of this order, Mr. Krumm must either: (1) file a written memorandum establishing the basis for this court's exercise of appellate jurisdiction over the DEA's August 12, 2016 decision or (2) need not respond or file anything at all. In this latter case, within 14 days from the date of the order, the attempted

petition for review will simply be dismissed for failure to prosecute pursuant to Tenth Circuit Rule 42.1 without further notice to the parties.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Lindy Lucero Schaible".

by: Lindy Lucero Schaible
Counsel to the Clerk