

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6949

JORGE GEVARA, a/k/a Jorge Galeas,

Plaintiff - Appellant,

v.

BETTY INPOLD,

Defendant - Appellee,

and

ALVIN W. KELLER, JR.; ROBERT C. LEWIS; RICHARD NEELY;
LAWRENCE PARSONS; JEFFREY T. SMITH; JUDY ATWATER; DENNIS E.
MARSHALL; D. HOUSE; J. HYATT; E. COLEMAN,

Defendants.

Appeal from the United States District Court for the Western
District of North Carolina, at Charlotte. Robert J. Conrad,
Jr., Chief District Judge. (3:10-cv-00454-RJC)

Submitted: October 11, 2012

Decided: October 15, 2012

Before KING, DUNCAN, and DIAZ, Circuit Judges.

Remanded by unpublished per curiam opinion.

Jorge Gevara, Appellant Pro Se. Peter Andrew Regulski,
Assistant Attorney General, Raleigh, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jorge Gevara seeks to appeal the district court's order denying relief on his 42 U.S.C. § 1983 (2006) civil rights action. Appellee Betty Inpold moves to dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed. Gevara has filed a response to the motion to dismiss. After review of the record and the parties' submissions, we remand to the district court.

The district court entered judgment on February 28, 2012, and the notice of appeal was received in this court and forwarded to the district court on May 15, 2012, after the expiration of the appeal period. Because Gevara is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988). The record reveals conflicting dates as to when Gevara gave the notice of appeal to prison officials for mailing.*

Accordingly, we defer action on the motion to dismiss and remand the case for the limited purpose of allowing the district court to obtain this information from the parties and to determine whether the filing of the notice of appeal was

* Gevara attests that he delivered the notice of appeal to prison authorities for mailing on March 4, 2012 and May 9, 2012.

timely under Fed. R. App. P. 4(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED