UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7666

PHILLIP SIMS,

Petitioner - Appellant,

v.

WARDEN CARTLEDGE,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. David C. Norton, District Judge. (5:13-cv-02291-DCN)

Submitted: March 29, 2018 Decided: April 3, 2018

Before AGEE and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Phillip Sims, Appellant Pro Se. Donald John Zelenka, Deputy Attorney General, James Anthony Mabry, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellee.

PER CURIAM:

Phillip Sims seeks to appeal the district court's order adopting the magistrate judge's recommendation and denying relief on Sims' 28 U.S.C. § 2254 (2012) petition. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on June 2, 2014. The notice of appeal was filed on December 21, 2017.[1] Because Sims failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny his motion for appointment of counsel, deny leave to proceed in forma pauperis, and dismiss the appeal.[2] We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

[1] For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); *Houston v. Lack*, 487 U.S. 266 (1988).

[2] Sims states that he is seeking leave to file the appeal out of time. However, the time for filing a motion for an extension or reopening of the appeal period has long passed. *See* 28 U.S.C. § 2107(c) (2012).