

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6387

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RICKEY COLLINS HOGGARD,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (2:04-cr-00066-RGD-2; 2:05-cv-00633-RGD)

Submitted: July 31, 2006

Decided: August 18, 2006

Before WILKINSON and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Rickey Collins Hoggard, Appellant Pro Se. Andrew Murdock Robbins, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Rickey Collins Hoggard seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2000) motion. The notice of appeal was received in the district court shortly after expiration of the appeal period. Because Hoggard 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 (1988). The record does not conclusively reveal when Hoggard gave the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to obtain available information from the parties that bears upon this question and to determine whether the filing was 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