

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7352

DAVID S. JOHNSON,

Petitioner - Appellant,

versus

JON GALLEY; ATTORNEY GENERAL OF THE STATE OF
MARYLAND,

Respondents - Appellees.

Appeal from the United States District Court for the District of
Maryland, at Baltimore. William M. Nickerson, Senior District
Judge. (1:06-cv-00973-WMN)

Submitted: November 21, 2007

Decided: December 6, 2007

Before WILKINSON, MOTZ, and TRAXLER, Circuit Judges.

Remanded by unpublished per curiam opinion.

David S. Johnson, Appellant Pro Se. Edward John Kelley, OFFICE OF
THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David S. Johnson seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2000) petition. The notice of appeal was received in the district court shortly after expiration of the appeal period, and it bore a notation that Johnson had previously filed a notice of appeal on July 17, 2007, within the appeal period. Because Johnson 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 Johnson gave his notice of appeal to prison officials for mailing. Accordingly, we grant leave to proceed in forma pauperis 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 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