

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7365

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID LOUIS MCPHERSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (4:00-cr-00081-H; 4:02-cv-00058)

Submitted: February 21, 2008

Decided: March 7, 2008

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

Remanded by unpublished per curiam opinion.

David Louis McPherson, Appellant Pro Se. Eric Evenson, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Louis McPherson seeks to appeal the district court's order denying his motion for reconsideration of the denial of his 28 U.S.C. § 2255 (2000) motion. The district court's judgment was entered on April 19, 2007. McPherson filed his notice of appeal, which was dated September 10, on September 17. In his notice of appeal, McPherson stated that he did not receive notice of the district court's judgment until September 10. Even giving McPherson the benefit of Houston v. Lack, 487 U.S. 266, 276 (1988), his notice was untimely filed. See Fed. R. App. P. 4(a)(1)(B).

Under Fed. R. App. P. 4(a)(6), the district court may reopen the time to file an appeal if (1) the moving party did not receive notice of entry of judgment within twenty-one days after entry, (2) the motion is filed within 180 days of entry of judgment or within seven days of receiving notice from the court, whichever is earlier, and (3) no party would be prejudiced. We remand to the district court to determine whether McPherson is entitled to the benefit of Rule 4(a)(6) to reopen the time to file an appeal. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED