

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7566

MICHAEL MCEVILY,

Petitioner - Appellant,

v.

GENE M. JOHNSON,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Henry Coke Morgan, Jr., Senior District Judge. (2:03-cv-00135-HCM)

Submitted: February 20, 2008

Decided: February 27, 2008

Before WILKINSON, MOTZ, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael McEvily, Appellant Pro Se. Stephen R. McCullough, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael McEvily seeks to appeal the district court's order denying his motion to vacate a void order and his motion for reconsideration. McEvily previously sought to appeal this order, but we dismissed his appeal because the notice of appeal was not timely filed. See McEvily v. Johnson, 241 F. App'x 969 (4th Cir. 2007). After that decision, McEvily sought an extension of time to file a notice of appeal from the district court, pursuant to Fed. R. App. P. 4(a)(6), which the district court granted. McEvily then filed another notice of appeal.

Our review of the record leads us to conclude that the district court erred in granting McEvily's motion. McEvily stated in his motion that he received the district court's order on June 22, 2007. He did not file a motion for extension or reopening of the appeal period until September 24, 2007.* Rule 4(a)(6)(B) requires that a motion to reopen the appeal period be filed "within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier." Because McEvily did not file his motion within seven days of receiving

*We assume that the date appearing on the motion 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).

notice of the entry of the district court's order, we dismiss the appeal.

We dispense with oral argument because the facts and legal conclusions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED