

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7731

CLARENCE HUELL,

Petitioner - Appellant,

v.

STATE OF SOUTH CAROLINA HUMAN AFFAIRS COMMISSION; HENRY
MCMASTER, Attorney General,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Greenville. Henry F. Floyd, District Judge.
(6:06-cv-02562-HFF)

Submitted: April 24, 2008

Decided: April 28, 2008

Before KING and SHEDD, Circuit Judges, and WILKINS, Senior Circuit
Judge.

Dismissed by unpublished per curiam opinion.

Clarence Huell, Appellant Pro Se. Samuel Creighton Waters, Donald
John Zelenka, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA,
Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clarence Huell seeks to appeal the district court's orders accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2000) petition and denying his subsequent Fed. R. Civ. P. 59(e) motion. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty 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). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's final order denying Huell's timely filed Rule 59(e) motion was entered on the docket on October 16, 2007. The notice of appeal was filed on November 19, 2007.* Because Huell failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument because the facts and legal

*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).

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED