

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 08-6752

KEITH D. WILSON,

Petitioner - Appellant,

v.

DON WOOD, Superintendent; THEODIS BECK, Secretary of Corrections,

Respondents - Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Jr., District Judge. (1:06-cv-00408-WO-WWD)

Submitted: September 16, 2008 Decided: September 22, 2008

Before MOTZ, TRAXLER, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Keith D. Wilson, Appellant Pro Se. Clarence Joe DelForge, III, Assistant Attorney General, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keith D. Wilson seeks to appeal the district court's order denying his second Fed. R. Civ. P. 60(b) motion for reconsideration of the district court's order denying relief on 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. Because Wilson 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 is ambiguous as to when Wilson 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 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