

UNPUBLISHED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: November 18, 2009

Decided: December 3, 2009

Before MICHAEL, MOTZ, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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 (2006) petition. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In a civil case in which the United States is not a party, a notice of appeal must be filed with the district court clerk within thirty days after the order appealed from is entered, see 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 order was entered on March 28, 2008. Because the record did not reveal when Wilson delivered his notice of appeal to prison officials for mailing, we remanded this case to the district court. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). After receiving responses from the parties and holding an evidentiary hearing, the district court found that Wilson filed his notice of appeal, at the earliest, on May 2, 2008, after the appeal period

expired. We conclude that the district court's factual finding is not clearly erroneous. Because Wilson filed his notice of appeal beyond the thirty-day appeal period and failed to obtain an extension or reopening of such period, we deny leave to proceed in forma pauperis and dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED