

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6972

MALCOLM WRIGHT, a/k/a Malcolm Y. Azariah,

Plaintiff - Appellant,

v.

CHARLES W. MCCURRY; JOHN DOE, #1; ROBERT UHREN, M.D.;
MCCLELLEN, (first name unknown); CAPELUPPO, (first name
unknown),

Defendants - Appellees.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Graham C. Mullen, Senior
District Judge. (1:06-cv-00206-GCM)

Submitted: July 22, 2008

Decided: July 28, 2008

Before WILKINSON, MOTZ, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Malcolm Wright, Appellant Pro Se. Elizabeth F. Parsons, Assistant
Attorney General, Raleigh, North Carolina; Elizabeth Pharr
McCullough, YOUNG, MOORE & HENDERSON, PA, Raleigh, North Carolina,
for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Malcolm Wright seeks to appeal the district court's order dismissing his 42 U.S.C. § 1983 (2000) complaint. 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 order was entered on the docket on May 18, 2007. The notice of appeal was filed on May 28, 2008.* Because Wright failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We deny Wright's motion for appointment of counsel. 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

*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).