UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7244

DEMETRIUS HILL,

Plaintiff - Appellant,

v.

WARDEN HAYNES; A. W. GILL; WARDEN DRIVER; CAPTAIN ODDO; LIEUTENANT CLEMENS; LIEUTENANT GIFFORD; LIEUTENANT TRAIT; CORRECTIONAL OFFICER SPOTLAN; FOSTER; CORRECTIONAL OFFICER MORGAN; COUNSELOR MORRERO; ETRIS,

Defendants - Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:06-cv-00136-JPB-JSK)

Submitted: March 10, 2009 Decided: April 1, 2009

Before NIEMEYER, TRAXLER, and GREGORY, Circuit Judges.

Remanded by unpublished per curiam opinion.

Demetrius Hill, Appellant Pro Se. Helen Campbell Altmeyer, Assistant United States Attorney, Wheeling, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Demetrius Hill seeks to appeal the district court's order declining to adopt the magistrate judge's recommendation and dismissing Hill's civil complaint without prejudice. The district court's judgment was entered on March 5, 2008. Hill's notice of appeal was filed on July 16, 2008, the day on which he delivered it to prison officials for mailing. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988). In his notice of appeal, Hill stated that he did not receive notice of the district court's order until July 9, 2008, when he received a copy of the district court's docket sheet, in response to his request to the district court for the status of his case.

Parties are accorded thirty days after 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)).

Hill's notice of appeal is clearly untimely filed. However, under Rule 4(a)(6), the district court may reopen the time to file an appeal if (1) the moving party did not receive notice of entry of judgment within twenty-one days after entry,

(2) the motion is filed within 180 days of entry of judgment or within seven days of receiving notice from the court, whichever is earlier, and (3) no party would be prejudiced. We remand to the district court to determine whether Hill is entitled to the benefit of Rule 4(a)(6) to reopen the time to file an appeal. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED