

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7853

MICHAEL SCOTT MCRAE,

Plaintiff - Appellant,

v.

MICHAEL EASLEY; BOYD BENNETT; MICHAEL S. HAMDEN; NORTH
CAROLINA OFFICE OF INDIGENT DEFENSE SERVICE; H. L. JACKSON,

Defendants - Appellees.

Appeal from the United States District Court for the Western
District of North Carolina, at Charlotte. Graham C. Mullen,
Senior District Judge. (3:08-cv-00353-GCM)

Submitted: January 15, 2009

Decided: January 23, 2009

Before MOTZ and SHEDD, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed in part; dismissed in part by unpublished per curiam
opinion.

Michael Scott McRae, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Scott McRae seeks to appeal the district court's order dismissing his 42 U.S.C. § 1983 (2000) complaint for failure to state a claim and the court's order denying his motions to amend and to appoint counsel. We dismiss in part and affirm in part.

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 dismissing the complaint was entered on the docket on August 11, 2008. The notice of appeal* was filed, at the earliest, on October 3, 2008. Because McRae failed to file a timely notice of appeal or to obtain an

* Although McRae did not mention specifically the order dismissing the complaint in his notice of appeal, he attempts to challenge that order in his informal appellate brief. See Smith v. Barry, 502 U.S. 244, 245 (1992) (holding that document filed within appeal period and containing information required by Fed. R. App. P. 3(c), is functional equivalent of notice of appeal).

extension or reopening of the appeal period, we dismiss this portion of the appeal for lack of jurisdiction.

Turning to the district court's order denying McRae's motions to amend and to appoint counsel, we note the McRae failed to challenge that order in his informal appellate brief. Thus, McRae has waived appellate review of those issues. See 4th Cir. R. 34(b) ("The Court will limit its review to the issues raised in the informal brief."). Accordingly, we affirm the district court's order.

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.

AFFIRMED IN PART;
DISMISSED IN PART