

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8224

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANIEL ORIAKHI,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Marvin J. Garbis, Senior District Judge. (1:92-cr-00283-MJG-1; 1:05-cv-02317-MJG)

Submitted: April 16, 2009

Decided: May 7, 2009

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

Remanded by unpublished per curiam opinion.

Daniel Oriakhi, Appellant Pro Se. Lynne Ann Battaglia, OFFICE OF THE UNITED STATES ATTORNEY, Robert Reeves Harding, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daniel Oriakhi seeks to appeal the district court's order denying his motion for reconsideration of the denial of his 28 U.S.C.A. § 2255 (West Supp. 2008) motion. The notice of appeal was received in the district court after expiration of the appeal period. Because Oriakhi 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 does not conclusively reveal when Oriakhi 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