

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8312

CHRISTOPHER GALE,

Petitioner - Appellant,

v.

WARDEN OF PERRY CORRECTIONAL INSTITUTION,

Respondent - Appellee,

and

JON OZMINT,

Respondent.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Patrick Michael Duffy, District Judge. (9:07-cv-02850-PMD)

Submitted: February 19, 2009

Decided: February 26, 2009

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Christopher Gale, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Christopher Gale seeks to appeal the district court's order adopting the report and recommendation of the magistrate judge and denying relief on his petition under 28 U.S.C. § 2254 (2000). 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)). Accord Bowles v. Russell, 551 U.S. 205, ___, 127 S.Ct. 2360, 2363-66 (2007).

The district court's order was entered on the docket on September 2, 2008. The notice of appeal was filed, at the earliest, on October 8, 2008.* Because Gale 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 Gale leave to proceed in forma pauperis, and we dispense with oral argument because the facts and legal contentions are adequately presented

* See Houston v. Lack, 487 U.S. 266, 276 (1988).

in the materials before the court and argument would not aid the decisional process.

DISMISSED