

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8554

JOMO RASHAD BAILEY,

Petitioner - Appellant,

v.

RICHARD E. BAZZLE, Warden at Perry Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Florence. Margaret B. Seymour, District Judge. (4:07-cv-03646-MBS)

Submitted: February 19, 2009

Decided: February 27, 2009

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jomo Rashad Bailey, Appellant Pro Se. William Edgar Salter, III, Assistant Attorney General, Donald John Zelenka, Deputy Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jomo Rashad Bailey seeks to appeal the district court's order adopting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2000) petition. 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 October 1, 2008. The notice of appeal was filed on December 12, 2008.* Because Bailey failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented

*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)(1); Houston v. Lack, 487 U.S. 266 (1988).

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

DISMISSED