UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6175

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

RODNEY MAURICE SAUNDERS,

Defendant – Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. William D. Quarles, Jr., District Judge. (1:04-cr-00406-WDQ-1; 1:08-cv-00874-WDQ)

Submitted: April 8, 2009 Decided: May 26, 2009

Before MICHAEL and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Rodney Maurice Saunders, Appellant Pro Se. Paul M. Tiao, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rodney Maurice Saunders seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West 2007) motion. The district court's order was entered on September 2, 2008. Saunders' notice of appeal was filed on January 26, 2009.* In his notice of appeal, Saunders states that he did not receive notice of the district court's order until January 26, 2009.

Where the United States is a party to a civil action, the parties are accorded sixty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(B), 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)); see Bowles v. Russell, 551 U.S. ____, 127 S. Ct. 2360, 2366 (2007).

Saunders' notice of appeal is clearly untimely. However, under Rule 4(a)(6), the district court may reopen the

* 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. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988).

time to file an appeal if: (1) the moving party did not receive notice of the entry of the order within twenty-one days after entry; (2) the motion is filed within 180 days of entry of the judgment or order or within seven days of receiving notice from the court, whichever is earlier; and (3) no party would be prejudiced. We accordingly remand to the district court to determine whether Saunders is entitled under Rule 4(a)(6) to the reopening of the appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED