

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6884

ISIAH JAMES, JR.,

Petitioner - Appellant,

v.

LEVERN COHEN,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Terry L. Wooten, District Judge. (9:07-cv-04163)

Submitted: September 4, 2009 Decided: September 14, 2009

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

Remanded by unpublished per curiam opinion.

Isiah James, Jr., Appellant Pro Se. Erin Mary Farrell, Daniel Roy Settana, Jr., MCKAY, CAUTHEN, SETTANA & STUBLEY, PA, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Isiah James, Jr., seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing his petition filed pursuant to 28 U.S.C. § 2254 (2006). The district court entered its order on February 19, 2009. James filed his notice of appeal on May 7, 2009, at the earliest.* In his notice of appeal, James stated that he received notice of the district court's order on May 5, 2009, and April 24, 2009.

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) (internal quotation marks and citation omitted); see Bowles v. Russell, 551 U.S. 205, 214 (2007).

James' notice of appeal is clearly untimely. However, under Rule 4(a)(6), the district court may reopen the time to appeal. Because the record is unclear as to when James actually received notice of the district court's dismissal of his action,

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

see Fed. R. App. P. 4(a)(6)(B), we remand this case to the district court for the limited purpose of determining when James received notice of the district court's entry of its final order and whether he is entitled to a reopening of the appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED