

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7039

SHELDON G. KEENER,

Petitioner - Appellant,

v.

RICHARD E. BAZZLE,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Patrick Michael Duffy, District Judge. (6:08-cv-02422-PMD)

Submitted: January 12, 2010

Decided: January 25, 2010

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

Dismissed by unpublished per curiam opinion.

Sheldon G. Keener, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sheldon G. Keener seeks to appeal the district court's order adopting the recommendation of the magistrate judge and dismissing without prejudice his petition under 28 U.S.C. § 2254 (2006). 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 August 13, 2008. The notice of appeal was dated May 27, 2009, and was filed on June 1, 2009. See Houston v. Lack, 487 U.S. 266 (1988). Because Keener failed to file a timely notice of appeal or 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 in the materials before the court and argument would not aid the decisional process.

DISMISSED