

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7091

JIMMIE MECCYA WILLIAMS,

Petitioner - Appellant,

v.

TERESA WAID, Warden, Huttonsville Correctional Center,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Joseph R. Goodwin, Chief District Judge. (2:08-cv-00214)

Submitted: November 4, 2009

Decided: January 25, 2010

Before WILKINSON, NIEMEYER, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jimmie Meccya Williams, Appellant Pro Se. Dawn Ellen Warfield, Deputy Attorney General, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jimmie Meccya Williams seeks to appeal the district court's order denying Williams' motion for summary judgment and denying his petition for habeas corpus under 28 U.S.C. § 2254 (2006) on its merits. 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 March 6, 2009. The notice of appeal may be deemed filed, at the earliest, on June 6, 2009.* Because Williams 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 Williams'

* Although the undated notice of appeal was received and filed on June 9, 2009, it was sent with a letter dated June 6, 2009. Because Williams is incarcerated, we apply the "prison mailbox" rule, and assume that the date on the letter is the earliest that Williams could have given his notice of appeal to prison officials for mailing. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 271-72 (1988).

motion for transcripts as moot and 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