UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7177

RAYMOND JUNIOR LEWELLYN,

Petitioner - Appellant,

v.

NORTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Wallace W. Dixon, Magistrate Judge. (1:08-cv-00788-WWD)

Submitted: September 28, 2009 Decided: November 17, 2009

Before MOTZ, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Raymond Junior Lewellyn, Appellant Pro Se. Clarence Joe DelForge, III, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Raymond Junior Lewellyn seeks to appeal the magistrate judge's order dismissing Lewellyn's 28 U.S.C. § 2254 (2006) petition as untimely.* We dismiss the appeal for lack of jurisdiction because no notice of appeal was 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 magistrate judge's memorandum and recommendation was issued on February 3, 2009. Hearing no objections, the magistrate judge entered final judgment on the docket on June 11, 2009. Lewellyn filed his untimely objection to the magistrate judge's recommendation on June 26, 2009, which the district court treated as his notice of appeal. Even construed liberally, however, Lewellyn's objection to the magistrate judge's recommendation falls well short of the notice

* The parties consented to the magistrate judge's jurisdiction pursuant to 28 U.S.C. § 636(c) (2006).

requirements of Fed. R. App. P. 3(c). No other document that could be construed as a notice of appeal was filed within the appeal period. Because Lewellyn 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 in the materials before the court and argument would not aid the decisional process.

DISMISSED