

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-8101

STEVEN LEWIS BARNES,

Plaintiff - Appellant,

v.

E. QUATTLEBAUM, Sergeant, individually and official
capacity; MAJOR JACKSON, individually and official capacity;
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Defendants - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Florence. Margaret B. Seymour, District
Judge. (4:08-cv-02197-MBS)

Submitted: May 22, 2010

Decided: May 25, 2010

Before WILKINSON, NIEMEYER, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Steven Lewis Barnes, Appellant Pro Se. Andrew Lindemann,
DAVIDSON, MORRISON & LINDEMANN, PA, Columbia, South Carolina,
for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Steven Lewis Barnes seeks to appeal the district court's order adopting the recommendation of the magistrate judge and dismissing Barnes' 42 U.S.C. § 1983 (2006) complaint without prejudice for failure to exhaust administrative remedies. 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 September 29, 2009. The notice of appeal was filed on October 30, 2009.* Because Barnes failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we grant the Appellees' motion to dismiss the appeal.

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

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