

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-7311**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL DAVID TURNER,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Jerome B. Friedman, Senior District Judge. (2:07-cr-00040-JBF-TEM-1; 2:10-cv-00038-JBF)

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Submitted: February 10, 2011

Decided: February 18, 2011

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Before WILKINSON and DAVIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Remanded by unpublished per curiam opinion.

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Michael David Turner, Appellant Pro Se. Laura Marie Everhart, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael David Turner seeks to appeal the district court's order denying his 28 U.S.C.A. § 2255 (West Supp. 2010) motion. Although the notice of appeal is dated within the appeal period, it was received in the district court shortly after the appeal period expired. Because Turner is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). The record does not reveal when Turner gave the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to obtain this information from the parties and to determine whether the filing was timely under Fed. R. App. P. 4 and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED