

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-7714

AUBIN LIBERTE,

Petitioner - Appellant,

v.

WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Joseph F. Anderson, Jr., District Judge. (0:09-cv-01343-JFA)

Submitted: February 28, 2011

Decided: March 9, 2011

Before TRAXLER, Chief Judge, and KING and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Aubin Liberte, Appellant Pro Se. William Edgar Salter, III, Assistant Attorney General, Donald John Zelenka, Deputy Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Aubin Liberte seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2006) petition and its subsequent order denying his motion to alter or amend judgment, pursuant to Fed. R. Civ. P. 59(e). 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). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order denying Liberte's Rule 59(e) motion was entered on the docket on October 22, 2010. The notice of appeal was filed on November 23, 2010.* Because Liberte failed to file a timely notice of appeal or to obtain an

* Because Liberte is incarcerated, he is deemed to have filed the notice of appeal on the date he deposited it in the prison mail system. Fed. R. App. P. 4(c)(1). Liberte signed and dated his notice of appeal November 23, 2010. Because this date is the earliest date on which Liberte could have deposited his notice of appeal in the prison mail system, we have afforded Liberte the presumption that he filed his notice of appeal on November 23, 2010.

extension or reopening of the appeal period, we deny leave to proceed in forma pauperis and 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