

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-7763

JOHN KEITH SMITH,

Plaintiff - Appellant,

v.

A. H. JAMALUDEEN, Doctor, Virginia Beach Correctional Center; PATRICIA CUNNINGHAM-ALLEN, HSA, Virginia Beach Correctional Center; K. MCWATERS, Director of Nurses, Virginia Beach Correctional Center,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (3:09-cv-00341-RLW)

Submitted: July 21, 2011

Decided: July 25, 2011

Before NIEMEYER and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

John Keith Smith, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Keith Smith seeks to appeal the district court's order dismissing his 42 U.S.C. § 1983 (2006) complaint without prejudice. 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 was entered on the docket on November 16, 2010. The notice of appeal was filed on December 21, 2010.* Because Smith failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We further deny Smith's pending motions for appointment of counsel and to compel. We dispense with oral argument because the facts and legal contentions are

* 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).

adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED