

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 11-6164**

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KENNETH WILLIAM RAY, II,  
  
Plaintiff - Appellant,

v.

JOE DRIVER, Rec Officer; HAROLD BOYLES; MICHELLE T.  
FUSEYAMORE, Regional Counsel,  
  
Defendants - Appellees.

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Appeal from the United States District Court for the Northern  
District of West Virginia, at Elkins. John Preston Bailey,  
Chief District Judge. (2:10-cv-00009-JPB-JSK)

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Submitted: May 26, 2011 Decided: June 1, 2011

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Before KING, SHEDD, and DIAZ, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Kenneth William Ray, II, Appellant Pro Se. Alan McGonigal,  
Assistant United States Attorney, Wheeling, West Virginia, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth William Ray, II, seeks to appeal the district court's order adopting the magistrate judge's report and recommendation, granting Appellees' motion for summary judgment, and dismissing Ray's complaint. The notice of appeal was received in the district court shortly after expiration of the appeal period. Because Ray 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 Ray 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(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED