

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 11-7258**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DIIJON TIMMONS,

Defendant - Appellant.

---

Appeal from the United States District Court for the Western District of Virginia, at Charlottesville. Norman K. Moon, Senior District Judge. (3:04-cr-00092-NKM-7; 3:08-cv-80066-NKM)

---

Submitted: April 23, 2012

Decided: May 7, 2012

---

Before WILKINSON, KING, and GREGORY, Circuit Judges.

---

Remanded by unpublished per curiam opinion.

---

Diijon Timmons, Appellant Pro Se. Ronald Mitchell Huber, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Diijon Timmons seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2011) motion. While we express no opinion on the merits of the district court's decision, we remand for further proceedings.

The district court's final order was entered on June 13, 2011. Timmons' notice of appeal was due by August 12, 2011. See Fed. R. App. P. 4(a)(1)(B). The notice of appeal is not dated. The envelope containing the notice of appeal bears a stamped postmark of August 17, 2011. The notice of appeal was filed on August 22, 2011.

"[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). A pro se prisoner's notice of appeal is deemed filed on the date when it is delivered to prison officials for mailing. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988). Because the envelope containing Timmons' notice of appeal bears a postmark that, excluding the intervening weekend, is only three days later than the appeal period's expiration date, we find it prudent to remand the case to the district court for the limited purpose of determining when Timmons delivered the notice of appeal to prison officials for mailing.

Leave to proceed in forma pauperis is granted. We dispense with oral argument because the facts and legal contentions are adequately presented in the material before the court and argument would not aid the decisional process.

REMANDED