

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6706

ROBERT WAYNE SMITH,

Plaintiff - Appellant,

v.

DAVID BAKER,

Defendant - Appellee,

and

NORTH CAROLINA DEPARTMENT OF CORRECTION HEALTH SERVICE
UTILIZATION REVIEW BOARD,

Defendant.

Appeal from the United States District Court for the Western
District of North Carolina, at Statesville. Robert J. Conrad,
Jr., Chief District Judge. (5:11-cv-00035-RJC)

Submitted: July 26, 2012

Decided: August 2, 2012

Before MOTZ, DAVIS, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Wayne Smith, Appellant Pro Se. Elizabeth Pharr
McCullough, Kelly Elizabeth Street, YOUNG, MOORE & HENDERSON,
PA, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Wayne Smith seeks to appeal the district court's order denying relief on his 42 U.S.C. § 1983 (2006) action. 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 March 5, 2012. The notice of appeal was filed, at the earliest, on April 9, 2012.* 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. Smith's motions for appointment of counsel are denied. We dispense with oral argument because the facts and legal contentions are adequately

* We presume that the date on the notice of appeal is the earliest date it could have been delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988).

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

DISMISSED