

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7807

FRANKLIN EUGENE MCCUNE,

Petitioner - Appellant,

v.

TERESA WAID, Warden W. Va.,

Respondent.

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. John Preston Bailey, Chief District Judge. (2:12-cv-00001-JPB-DJJ)

Submitted: February 21, 2013

Decided: February 25, 2013

Before AGEE and DAVIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Franklin Eugene McCune, Appellant Pro Se. Silas B. Taylor, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Franklin Eugene McCune seeks to appeal the district court's order adopting the magistrate judge's recommendation and dismissing his 28 U.S.C. § 2254 (2006) motion. We dismiss his appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In civil cases like McCune's, parties are accorded thirty days after entry of the district court's final judgment or order to note an appeal. Fed. R. App. P. 4(a)(1)(A). The order that McCune seeks to appeal was entered on June 7, 2012. McCune thus had thirty days, or until Monday, July 9, 2012, in which to note an appeal. See Fed. R. App. P. 4(a)(1)(A) & 26(a)(1)(C). Nevertheless, McCune filed his notice of appeal, at earliest, on October 2, 2012 – almost three months too late.*

Because "the timely filing of a notice of appeal in a civil case is a jurisdictional requirement," we lack jurisdiction to consider Robinson's claims. Bowles v. Russell, 551 U.S. 205, 214 (2007). Accordingly, we dismiss McCune's appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

* 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).

before this court and argument would not aid the decisional process.

DISMISSED