

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6470

LEVON TODD,

Petitioner - Appellant,

v.

LEWIS SMITH,

Respondent - Appellee.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Robert J. Conrad,
Jr., District Judge. (1:12-cv-00025-RJC)

Submitted: July 18, 2013

Decided: July 23, 2013

Before WILKINSON, MOTZ, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Levon Todd, Appellant Pro Se. Mary Carla Hollis, Assistant
Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Levon Todd seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2006) petition. 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). The district court may, however, extend the time for filing a notice of appeal if a party so moves within thirty days after expiration of the original appeal period and demonstrates excusable neglect or good cause for the extension. Fed. R. App. P. 4(a)(5)(A)(i)-(ii); Washington v. Bumgarner, 882 F.2d 899, 900-01 (4th Cir. 1989).

The district court's order dismissing Todd's § 2254 petition was entered on the docket on January 14, 2013. Thus, Todd had until February 13, 2013 to file a notice of appeal. The notice of appeal was filed, at the earliest, on February 23, 2013.* Because Todd's notice of appeal was filed beyond the expiration of the appeal period but within the thirty-day excusable neglect period, we construe as a timely request for an

* Although Todd's notice of appeal indicates it was signed on February 23, 2013, Todd indicates in his informal brief that his notice of appeal was placed in his institution's internal mailing system for mailing on March 7, 2013. See Houston v. Lack, 487 U.S. 266, 276 (1988) (holding that a pro se prisoner's notice of appeal is considered filed the moment it is delivered to prison authorities for mailing to the court).

extension of time the letter accompanying Todd's notice of appeal. Accordingly, we remand this case to the district court for the limited purpose of determining whether Todd has demonstrated excusable neglect or good cause warranting an extension of the appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED