

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6539

CHARLES WILLINGHAM,

Plaintiff - Appellant,

v.

BUNCOMBE COUNTY CORRECTIONAL CENTER,

Defendant - Appellee.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Robert J. Conrad,
Jr., Chief District Judge. (1:12-cv-00383-RJC)

Submitted: May 30, 2013

Decided: June 5, 2013

Before SHEDD, DIAZ, and THACKER, Circuit Judges.

Remanded by unpublished per curiam opinion.

Charles D. Willingham, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charles Willingham seeks to appeal the district court's order dismissing his 42 U.S.C. § 1983 (2006) civil rights action. The district court's order was entered on the docket on January 15, 2013. Willingham's notice of appeal was filed on March 24, 2013.* In the notice of appeal, Willingham appears to claim he did not receive notice of the district court's order until March 24, 2013. Where, as here, a pro se appellant files an untimely notice of appeal offering some excuse for its untimeliness, that notice is properly construed as a motion to reopen the time to note an appeal under Fed. R. App. P. 4(a)(6). United States v. Feuver, 236 F.3d 725, 729 n.7 (D.C. Cir. 2001). Accordingly, we defer action on Willingham's motion to appoint counsel and remand the case to the district court for that court to determine whether Willingham can satisfy the requirements of Rule 4(a)(6). Ogden v. San Juan Cnty., 32 F.3d 452, 454 (10th Cir. 1994). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED

* 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, 276 (1988).