

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7589

ROBBIE COLLINS,

Petitioner - Appellant,

v.

ANTHONY PADULA,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Cameron McGowan Currie, Senior District Judge. (2:12-cv-00710-CMC)

Submitted: February 11, 2014

Decided: February 19, 2014

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

Remanded by unpublished per curiam opinion.

Robbie Collins, Appellant Pro Se. Donald John Zelenka, Senior Assistant Attorney General, Alphonso Simon, Jr., Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robbie Collins seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2012) petition. The notice of appeal was received in the district court shortly after expiration of the appeal period. Because Collins is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). Although the record indicates that Collins did not give the notice of appeal to prison officials until after expiration of the appeal period, Collins claimed in the notice that he had sent an earlier notice of appeal to the district court. The record does not contain any earlier notice of appeal or reveal when Collins may have given any such notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to obtain this information from the parties and to determine whether the filing was timely under Fed. R. App. P. 4(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED