

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-6867

MARIO RAMOS HINOJOS, JR.,

Petitioner - Appellant,

v.

NFN BUSH, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (2:14-cv-02960-DCN)

Submitted: September 15, 2015

Decided: December 3, 2015

Before NIEMEYER, MOTZ, and WYNN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Mario Ramos Hinojos, Jr., 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Unpublished opinions are not binding precedent in this circuit.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:

Mario Ramos Hinojos, Jr., a South Carolina inmate, seeks to appeal the district court's order accepting the magistrate judge's recommendation and denying relief on Hinojos's 28 U.S.C. § 2254 petition. In a federal habeas proceeding brought by a state prisoner against state prison officials, parties have thirty days following the entry of the district court's final judgment or order in which to file a notice of appeal. Fed. R. App. P. 4(a)(1)(A). However, if a party moves for an extension of time to appeal within 30 days after expiration of the original appeal period and demonstrates excusable neglect or good cause, a district court may extend the time to file a notice of appeal. Fed. R. App. P. 4(a)(5)(A); Washington v. Bumgarner, 882 F.2d 899, 900-01 (4th Cir. 1989).

The district court's final judgment was entered on April 10, 2015. Hinojos filed his notice of appeal on May 16, 2015,* after the expiration of the 30-day appeal period but within the excusable neglect period. Hinojos's notice of appeal contained language that can fairly be construed as a request for an extension of time to appeal. Accordingly, we remand this case

* See Houston v. Lack, 487 U.S. 266, 276 (1988) (holding that a pro se prisoner's notice of appeal is filed when the prisoner delivers it to prison authorities for forwarding to the court clerk).

to the district court for the limited purpose of determining whether Hinojos has demonstrated excusable neglect or good cause warranting an extension of the 30-day appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED