

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7889

WENDELL C. HELFRICK,

Petitioner - Appellant,

v.

BENJAMIN WRIGHT, Warden, River North Correctional Center;
MARK HERRING, Attorney General for the Commonwealth of
Virginia,

Respondents - Appellees.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. James P. Jones, District
Judge. (7:14-cv-00577-JPJ-RSB)

Submitted: February 25, 2016

Decided: March 2, 2016

Before SHEDD and HARRIS, Circuit Judges, and DAVIS, Senior
Circuit Judge.

Remanded by unpublished per curiam opinion.

Wendell C. Helfrick, Appellant Pro Se. Elizabeth Catherine
Kiernan, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond,
Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Wendell C. Helfrick, a Virginia inmate, seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition. The district court entered the order on September 23, 2015, but Helfrick did not file his notice of appeal until November 25. See Houston v. Lack, 487 U.S. 266, 276 (1988) (holding that prisoner's notice of appeal is deemed filed on date he delivered it to prison officials for mailing to court). Helfrick's notice of appeal is clearly untimely. See Fed. R. App. P. 4(a)(1)(A). In his notice, however, Helfrick moved the court to excuse his late filing, stating that counsel did not notify him of the order's entry until November 24.*

Under Fed. R. App. P. 4(a)(6), the district court may reopen the time to file an appeal for a 14-day period if: (1) the moving party did not receive notice of the entry of the order within 21 days after entry; (2) a motion to reopen the appeal period is filed within 180 days after the order is entered or within 14 days after the movant receives notice of the entry, whichever is earlier; and (3) no party would be prejudiced.

* Helfrick supports this assertion with a copy of the letter from counsel.

We remand to the district court for the limited purpose of determining whether Helfrick is entitled to have his time to file an appeal reopened under Rule 4(a)(6). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED