

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6694

WARREN RUSSELL,

Petitioner - Appellant,

v.

WARDEN REYNOLDS,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. J. Michelle Childs, District Judge. (9:14-cv-04035-JMC)

Submitted: October 20, 2016

Decided: November 16, 2016

Before MOTZ, TRAXLER, and KEENAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Warren Russell, Appellant Pro Se. Donald John Zelenka, Senior Assistant Attorney General, Melody Jane Brown, Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Warren Russell seeks to appeal the district court's order adopting the magistrate judge's recommendation and denying relief on Russell's 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 Russell is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). The record does not reveal when Russell gave the 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