

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6831

OTIS T. MADISON,

Petitioner - Appellant,

v.

DIRECTOR OF THE VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:15-cv-00422-HEH-RCY)

Submitted: October 18, 2016

Decided: October 21, 2016

Before WILKINSON, KING, and FLOYD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Otis T. Madison, Appellant Pro Se. Aaron Jennings Campbell, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Otis T. Madison seeks to appeal the district court's order accepting the magistrate judge's recommendation and denying relief on his 28 U.S.C. § 2254 (2012) petition. Parties are accorded 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

Because Madison is incarcerated, the notice of appeal is considered filed on the date it was "deposited in the institution's internal mailing system." Fed. R. App. P. 4(c)(1); accord Houston v. Lack, 487 U.S. 266, 276 (1988). The record does not conclusively reveal when Madison delivered the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to determine this fact and, having done so, to determine whether the filing was timely under Fed. R. App. P. 4(c)(1). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED