

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 17-6293**

---

DENIS RIVERA,

Plaintiff - Appellant,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS; HAROLD CLARKE; DAVID ROBINSON; G. K. WASHINGTON; RANDALL MATHENA; GREGORY HOLLOWAY; SCOTT RICHESON; MALCOLM TAYLOR; KEITH DAWKINS; DR. BRANE; JIM PARKS; HENRY PONTON; EARL BARKSDALE; GEORGE HINKLE; ELIZABETH THORNTON; J. WALRATH; I. HAMILTON; T. PURYEAR; J. ARTRIP; A. GALLIHAR; G. BAKER; MICHAEL YOUNCE; WALTER SWINEY; TORI RAIFORD; DWAYNE TURNER; STACY DAY; CHRISTOPHER GILBERT; JOE FANNIN; TONY ADAMS; G. A. ADAMS; K. A. SYKES; R. KEGLEY; B. E. STALLARD; JACKSON; J. KING, former counselor at Red Onion State Prison; A. B. DUNCAN, Unit Manager,

Defendants - Appellees,

and

EXTERNAL REVIEW TEAM; DUAL TREATMENT TEAM; UNIT MANAGER TEAM,

Defendants.

---

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James P. Jones, District Judge. (7:15-cv-00156-JPJ-RSB)

---

Submitted: July 20, 2017

Decided: July 24, 2017

---

Before DUNCAN and WYNN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

---

Remanded by unpublished per curiam opinion.

---

Denis Rivera, Appellant Pro Se. Richard Carson Vorhis, Senior Assistant Attorney General, John Michael Parsons, Assistant Attorney General, Richmond, Virginia, for Appellees.

---

Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Denis Rivera seeks to appeal the district court's order denying relief on his 42 U.S.C. § 1983 (2012) complaint. The district court entered its order granting summary judgment to the Defendants on December 8, 2016. Rivera filed his notice of appeal on March 1, 2017. However, prior to filing his notice of appeal, Rivera filed a motion pursuant to Fed. R. Civ. P. 59(e). The district court received Rivera's motion on January 9. In order for the Rule 59(e) motion to render Rivera's notice of appeal timely filed as to the underlying judgment, the motion was due on January 5. Fed. R. App. P. 4(a)(4)(A)(v). Because Rivera is incarcerated, the motion is considered filed as of the date it was properly delivered to prison officials for mailing to the court. *Houston v. Lack*, 487 U.S. 266 (1988). The record does not reveal when Rivera gave the Rule 59(e) motion 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 *Houston v. Lack*. The record, as supplemented, will then be returned to this court for further consideration.

*REMANDED*