UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 17-6482

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JEREMIAH LAMONT LUKE,

        Petitioner - Appellant,

    v.

CARLTON B. JOYNER,

        Respondent - Appellee.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:15-cv-00168-FDW)

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Submitted: July 27, 2017   Decided: August 1, 2017

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Before AGEE and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Remanded by unpublished per curiam opinion.

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Jeremiah Lamont Luke, Appellant Pro Se. Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeremiah Lamont Luke seeks to appeal the district court's order, entered on December 5, 2016, dismissing his 28 U.S.C. § 2254 (2012) petition. Although the docketed notice of appeal was received well outside the expiration of the appeal period, Luke declares that he previously delivered his original notice of appeal to prison officials for mailing on December 13, 2016, within the 30-day appeal period. Fed. R. App. P. 4(a)(1)(A). Because Luke 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, 276 (1988). The record does not conclusively reveal when Luke delivered his earliest notice of appeal to prison officials for mailing, whether the institution in which Luke is confined has a separate legal mail system, and if so, whether Luke used that system to send his earliest notice of appeal. 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