

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 18-7329**

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METKEL ALANA,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Dir. of Va. DOC,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:18-cv-00205-RAJ-RJK)

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Submitted: March 14, 2019

Decided: March 19, 2019

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Before WYNN and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

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Remanded by unpublished per curiam opinion.

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Metkel Alana, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Virginia prisoner Metkel Alana appeals the district court's order adopting the magistrate judge's recommendation to dismiss Alana's 28 U.S.C. § 2254 (2012) petition as successive and unauthorized. 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). The district court may, however, extend the time for filing a notice of appeal if a party so moves within 30 days after expiration of the original appeal period and demonstrates excusable neglect or good cause for the extension. Fed. R. App. P. 4(a)(5)(A)(i)-(ii); *Washington v. Bumgarner*, 882 F.2d 899, 900-01 (4th Cir. 1989).

The district court's order dismissing Alana's § 2254 petition was entered on the docket on September 7, 2018. Thus, Alana had until October 9, 2018,\* to file a notice of appeal. Alana's notice of appeal was filed, at the earliest, on October 15, 2018. *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that a pro se prisoner's notice of appeal is considered filed the moment it is delivered to prison authorities for mailing to the court).

Because Alana's notice of appeal was filed beyond the expiration of the appeal period, but within the 30-day excusable neglect period and posits an excuse for its untimeliness, we construe Alana's filing as a timely request for an extension of time to

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\* The 30-day appeal period expired on October 7th, a Sunday, and Monday, October 8th, was a federal holiday. The notice of appeal was, therefore, due on the next business day, or Tuesday, October 9th. *See* Fed. R. App. P. 26(a)(1)(C).

file an appeal. Accordingly, we remand this case to the district court for the limited purpose of determining whether Alana has demonstrated excusable neglect or good cause warranting an extension of the appeal period. The record, as supplemented, will then be returned to this court for further consideration.

*REMANDED*