

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6172

WILLIAM SCOTT DAVIS, JR.,

Plaintiff - Appellant,

v.

HON. W. EARL BRITT; JEFF SESSIONS, USAG; JAMES GARNETT, JR., PRJ;
DONAL HUNTER, PRJ; USMS UNKNOWN DEPUTY,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Norfolk. Mark S. Davis, Chief District Judge. (2:18-cv-00166-MSD-LRL)

Submitted: June 27, 2019

Decided: July 17, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

William Scott Davis, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Scott Davis, Jr., seeks to appeal the district court's order transferring his 28 U.S.C. § 2255 (2012) motion to the United States District Court for the Eastern District of North Carolina. The district court entered its transfer order on May 25, 2018. Davis did not file his notice of appeal until January 2019. However, prior to filing his notice of appeal, Davis filed a motion pursuant to Fed. R. Civ. P. 60. The district court received Davis' motion on June 25, 2018. In order for the Rule 60 motion to render Davis' notice of appeal timely filed as to the underlying transfer order, the motion was due on June 22, 2018. Fed. R. App. P. 4(a)(4)(A)(vi). Because Davis 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, 275-76 (1988). The record does not reveal when Davis gave the Rule 60 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 Davis 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