

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-6277

ANGELO APPLEWHITE,

Petitioner - Appellant,

v.

LARRY DAIL,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:17-hc-02005-D)

Submitted: April 25, 2019

Decided: April 30, 2019

Before FLOYD and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Angelo Applewhite, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Angelo Applewhite seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2012) petition. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

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).

The district court's order was entered on the docket on January 4, 2019. Thus, Applewhite had until February 4, 2019,* to file a notice of appeal. Applewhite's notice of appeal was filed, at the earliest, on February 7, 2019. *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that pro se prisoner's notice of appeal is considered filed moment it is delivered to prison authorities for mailing to court). Because Applewhite failed to file a timely notice of appeal or obtain an extension or reopening of the appeal period, we deny leave to proceed in forma pauperis and dismiss the appeal. We deny Applewhite's motion for permission to appeal sentence modification under 18 U.S.C. § 3582(c)(2) (2012), and dispense with oral argument because the facts and legal

* The 30-day appeal period expired on Sunday, February 3. The notice of appeal was, therefore, due on the next business day. *See* Fed. R. App. P. 26(a)(1)(C).

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED