

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7106

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EZEQUIEL GONZALEZ GARZA,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Terrence W. Boyle, Chief District Judge. (4:16-cr-00011-BO-1; 4:19-cv-00002-BO)

Submitted: December 17, 2019

Decided: December 20, 2019

Before KING, FLOYD, and HARRIS, Circuit Judges.

Remanded by unpublished per curiam opinion.

Ezequiel Gonzalez Garza, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ezequiel Gonzalez Garza seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2012) motion. Garza filed two notices of appeal, both of which were received in the district court shortly after expiration of the appeal period. Although Garza is incarcerated in Texas, both notices appear to have been mailed from Las Vegas, Nevada.

Because Garza is incarcerated, his notice of appeal is considered filed as of the date it was properly delivered to prison officials for mailing to the district court. Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266 (1988). However, the record does not reveal whether Garza actually delivered the notices to prison officials for mailing to the court or if the notices were mailed by someone else. Furthermore, if Garza did deliver the notices to prison officials for mailing to the court, it is not clear whether he delivered them within the appeal period.

Accordingly, we remand the case for the limited purpose of allowing the district court to determine whether Garza delivered either notice of appeal to prison officials for mailing to the court, and, if he did, whether the notice can be considered timely under Rule 4(c)(1) and *Houston v. Lack*. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED