

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-6026**

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JOWARSKI RUSSELL NEDD,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director, Virginia Department of Corrections,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. John A. Gibney, Jr., District Judge. (3:16-cv-00948-JAG-RCY)

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Submitted: May 25, 2021

Decided: May 28, 2021

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Before DIAZ and QUATTLEBAUM, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Remanded by unpublished per curiam opinion.

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Jowarski Russell Nedd, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jowarski Russell Nedd seeks to appeal the district court's October 26, 2020, order denying as untimely Nedd's second Fed. R. Civ. P. 60(b) motion challenging the dismissal of his 28 U.S.C. § 2254 petition. Nedd noted his appeal on December 24, 2020,<sup>\*</sup> after the 30-day period to note an appeal expired. However, Nedd's letter, which the district court construed as a notice of appeal, stated that he was inquiring about the status of a notice of appeal that he had mailed on November 10, 2020. That alleged notice of appeal does not appear on the district court's docket sheet. Accordingly, we remand the case for the limited purpose of allowing the district court to conduct the fact finding necessary to determine whether this appeal was timely filed under Fed. R. App. P. 4(c)(1). The record, as supplemented, will then be returned to this court for further consideration.

*REMANDED*

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<sup>\*</sup> For the purpose of this appeal, we assume that the date appearing on the letter is the earliest date Nedd could have delivered it to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266, 276 (1988).