

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6771

MICHAEL JOHNSON,

Plaintiff - Appellant,

v.

MARIAN FOGAN; SCOTT MORAN,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Stephanie A. Gallagher, District Judge. (1:21-cv-02570-SAG)

Submitted: November 30, 2023

Decided: December 12, 2023

Before THACKER and QUATTLEBAUM, Circuit Judges, and MOTZ, Senior Circuit
Judge.

Remanded by unpublished per curiam opinion.

Michael Johnson, Appellant Pro Se. Christopher A. Gozdor, OFFICE OF THE
ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Johnson seeks to appeal the district court's order granting Defendants' motion to dismiss his 42 U.S.C. § 1983 complaint for failure to state a claim. The district court received the notice of appeal shortly after expiration of the appeal period, though the notice was dated within the appeal period. Because Johnson is serving a criminal sentence while confined to a state institution, the notice of appeal is considered filed as of the date it was properly delivered to facility officials for mailing to the court. Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266, 276 (1988). However, "[i]f an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule." Fed. R. App. P. 4(c)(1). The record does not conclusively establish whether the institution where Johnson is housed has such a system, whether he used that system, or when he delivered the notice of appeal to the institution's officials for mailing. Accordingly, we remand this case for the limited purpose of allowing the district court to ascertain those facts and determine whether the notice of appeal was timely filed under Rule 4(c)(1) and *Houston*. The record, as supplemented, will then be returned to this court for further consideration. We defer ruling on Johnson's motion for a new trial until that time.

REMANDED