

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ANDREW JACKSON SMITH,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 07-00268-CG-B
)	
TROY KING, et al.,)	
)	
Defendants.)	

ORDER

By Order dated April 23, 2010, the Court of Appeals remanded this case for the limited purpose of determining when Andrew Jackson Smith’s notice of appeal was delivered to prison officials for forwarding to this court.¹

This court ordered the parties to file any supplementary evidence they deemed appropriate to a determination of the date plaintiff’s notice of appeal was delivered to prison officials. The plaintiff thereafter filed a response that failed to state when the notice of appeal was filed. (Doc. 37). This court again ordered the parties to file any evidence they have concerning the date the notice of appeal was delivered to prison officials. (Doc. 380). In response to the second order, plaintiff has now provided a statement under penalty of perjury that he placed the notice of appeal in the Elmore Correctional Facility Legal Mail on or about June 15, 2009.² (Doc. 38, p. 3). This statement is at odds with the fact that the order which was mailed to plaintiff at his then address of record, and from which the plaintiff is appealing, was

¹ The order that plaintiff is appealing was dated and docketed on June 9, 2009. The notice of appeal was docketed in this court on February 2, 2010.

² Defendant has filed no evidence in response to the court’s orders.

returned to this court as undeliverable on June 22, 2009. (Doc. 22). However, as the statement is made under penalty of perjury, this court finds that the notice of appeal was delivered to prison officials for mailing on June 15, 2009.

DONE and **ORDERED** this 9th day of July, 2010.

/s/ Callie V. S. Granade
UNITED STATES DISTRICT JUDGE