

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JOHNNY L. BROWN

PETITIONER

vs.

Civil Action No. 3:04-cv-970 HTW-LRA

JAMES HOLMAN, ET AL.

RESPONDENTS

ORDER

Before the court is the remand of the above styled and numbered cause by the United States Court of Appeals for the Fifth Circuit, stating that it could not determine from the record when the petitioner Johnny L. Brown delivered his notice of appeal to prison authorities, or whether the notice, together with the two motions, were all delivered to prison authorities for forwarding to the district court. The Petitioner's notice of appeal is not dated, but it was filed in this court on May 2, 2008, along with a motion to proceed as a pauper, an affidavit of pauper status, a motion for a certificate of appealability, a memorandum in support of the request for a certificate, and a designation of record.

The petitioner submits his own affidavit saying that all the aforementioned documents were submitted to the appropriate prison officials for mailing on April 25, 2008. The affidavit of Jackie Grant also is submitted by the petitioner who says she typed the petitioner's notice of appeal, his designation of the record, his request for a certificate of appealability, and a brief in support, all on April 2, 2008. Grant further states that the petitioner informed her of the 30-day time limit to submit an appeal.

The petitioner says that the institutional mail-log is no longer available to him since he no longer is housed in that facility. The petitioner further notes that the notice of appeal is numbered page one (1), the designation of record is page two (2), and a "certificate of service" which is numbered page three (3) is dated April 25, 2008. While this court cannot locate the third document, the certificate of service which is attached to the petitioner's memorandum in support of request for a certificate of appealability is dated April 25, 2008.

A pro se prisoner's notice of appeal is deemed filed when he places it in the prison mail system. Rule 4(c) of the Federal Rules of Appellate Procedure; *Houston v. Lack*, 487 U.S. 266, 270 (1988); *Causey v. Cain*, 450 F.3d 601, 604 (5th Cir. 2006). This court is persuaded that the deadline date in the instant case, April 25, 2008, was met and that the petitioner's appeal may proceed.

SO ORDERED, THIS THE 17th DAY OF December, 2008.

s/ HENRY T. WINGATE

CHIEF UNITED STATES DISTRICT JUDGE