

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:12-cv-00186-MOC

ERICA FLOOD,)
)
 Petitioner,)
)
 Vs.) ORDER
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

THIS MATTER is before the court on Remand from the Court of Appeals for the Fourth Circuit for the limited purpose of allowing this court to obtain information from the parties concerning when petitioner delivered her Notice of Appeal to prison authorities, all in accordance with Fed. R. App. P. 4(c)(1) and Houston v. Lack, 487 U.S. 266 (1988). On June 4, 2013, the court entered an Order (#15) requiring responses within 14 days. Allowing three days for mailing to petitioner and three days for a return mailing, petitioner's response was due not later than June 24, 2013. No response has been filed within that time.

In conformity with the Order of the Court of Appeals for the Fourth Circuit, the court has attempted to obtain information concerning when petitioner delivered her Notice of Appeals to prison authorities for mailing. Having considered all the documents of record, the court makes the following findings:

- (1) Petitioner submitted to this court a Notice of Appeal purportedly signed and delivered to prison authorities on August 15, 2012.

- (2) Review of the envelope in which such notice was delivered reveals a postal cancellation date of to be “January 2013”¹ and a “Received” stamp applied by the Clerk of this Court January 10, 2013. See Docket Entry (#12-1).
- (3) Also on that envelope is a United States Postal Service commemorative postage stamp. The stamp applied was a stamp included in the 2012 four-panel holiday stamp “Santa and Sleigh.” According to a postal bulletin issued by the United States Postal Service, the *First Day of Issue* of such commemorative stamp was October 11, 2012. The official postal bulletin provided that “[t]he stamps will go on sale nationwide October 11, 2012. (see https://about.usps.com/postal-bulletin/2012/pb22345/html/info_007.htm (as viewed June 25, 2013));
- (4) In response to the court’s inquiry, Order (#15), respondent has submitted an affidavit from Phillip Fondale, Supervisory Correctional Systems Specialist, Federal Prison Camp, Alderson, West Virginia (“Fondale Aff.”). In that affidavit, Spc. Fondale avers in relevant part, as follows:
7. At FPC Alderson, staff do not put postage on an inmate’s mail. Inmates may ask staff to weigh their mail if they need to know how much postage is required.
8. I spoke with mailroom staff, inmate Flood’s Case Manager, and the Unit Secretary. No one recalls any issues with inmate Flood’s mail.
- Fondale Aff. At ¶¶ 7-8;
- (5) Spc. Fondale also annexed to his affidavit a copy of the mail procedures applicable at FPC Alderson. Those procedures provide that mail items left with prison authorities in certain designated places will be collected and delivered to the Alderson Post Office each weekday. Id. at Exh. 1.

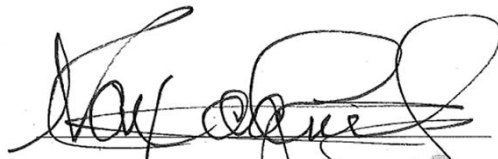
¹ The exact day is blurred, but appears to be January 8, 2013.

Conclusions

Based on such findings, this court concludes that petitioner did not submit her Notice of Appeal on or about August 15, 2012, to prison authorities for mailing. Indeed, in no event could she have submitted the Notice of Appeal within 60 days of August 8, 2012, as the stamp she applied to the envelope was issued to the public more than 60 days from the date of entry of the Clerk's Judgment (#11). Thus, it appears more probable than not that petitioner delivered her backdated Notice of Appeal to prison authorities on or about January 7, 2013, making such date the date of filing of her notice of appeal. Thus, the filing was not timely under Fed. R. App. P. 4(c)(1) and Houston v. Lack.

The Clerk of this Court shall certify a copy of this Order to the Clerk of the Court of Appeals for the Fourth Circuit, all in conformity with the Order of Limited Remand in United States v. Flood, No. 13-6054 .

Signed: June 25, 2013

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.", written over a horizontal line.

Max O. Cogburn Jr.
United States District Judge