

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:15cv168-FDW**

JEREMIAH LAMONT LUKE,)
)
 Petitioner,)
)
 vs.)
)
 CARLTON B. JOYNER,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court for the purpose of determining when Petitioner Jeremiah Lamont Luke filed notice of appeal in the above-captioned action. See Luke v. Joyner, No. 17-6482, 2017 WL 3263715 (4th Cir. Aug. 1, 2017). Petitioner is a prisoner of the State of North Carolina and has been incarcerated at Nash Correctional Institution throughout this action.

On December 5, 2016, this Court entered an order and judgment dismissing Petitioner’s 28 U.S.C. § 2254 habeas petition. (Doc. Nos. 15, 16.) On February 16, 2017, the Clerk of Court received and docketed a letter from Petitioner inquiring about the status of a notice of appeal he purportedly mailed to this Court on December 13, 2016. (Doc. No. 17.) The Clerk responded to Petitioner’s inquiry the same day by sending him a copy of the docket sheet in the above-captioned action and a letter informing him that the Clerk’s Office had not received his notice of appeal. (Staff notes, Doc. No. 17.)

On April 3, 2017, the Fourth Circuit Court of Appeals received a letter from Petitioner complaining that he had not received any notice that his December 13, 2016 notice of appeal had been docketed in this Court. (Letter to 4th Cir. 2, Doc. No. 18.) Petitioner attached a copy of his purported notice of appeal to the letter. (Letter to 4th Cir. 3.) The Fourth Circuit construed

Petitioner's letter and attachment as a notice of appeal and forwarded them to this Court to be filed as such. (Not. of Appeal 1, Doc. No. 18.) In accordance with Rule 4(d) of the Federal Rules of Appellate Procedure, the Court docketed the notice of appeal as having been filed on April 3, 2017, the date Petitioner's letter was received by the Fourth Circuit. See Fed. R. App. P. 4(d) ("If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.")

The Fourth Circuit subsequently took up Petitioner's appeal, noting that it had been docketed well outside the 30-day period for filing a notice of appeal in a § 2254 action. Luke, 2017 WL 3263715 at *1 (citing Fed. R. App. P. 4(a)(1)(A)). However, in light of Petitioner's declarations that he delivered his original notice of appeal to prison officials for mailing on December 13, 2016, the Fourth Circuit issued a limited remand for this Court to determine whether Petitioner filed a timely notice of appeal on December 13, 2016. Id.

The Court is aided in its task by counsel for Respondent, who has filed a copy of the Nash Correctional Institution's log of outgoing legal mail for December 12-13, 2016. (Resp't's Ex. 1, Doc. No. 21-1.) The log shows that on December 13, 2016, Petitioner delivered legal mail addressed to the United States District Court to prison officials for mailing. (Mail Log 2, Doc. No. 21-1.) The district court's Charlotte address is noted correctly on the log.

Whatever Petitioner placed in the outgoing legal mail on December 13, 2016, has never been received by the district court. The undersigned, however, has no reason to question Petitioner's assertions that it was a notice of appeal.

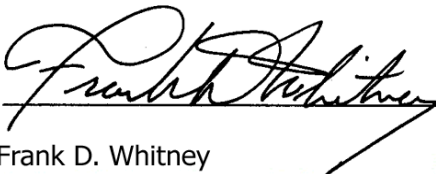
Based upon the foregoing, the Court finds as a matter of fact that on December 13, 2016,

Petitioner delivered a notice of appeal addressed to the United States District Court for the Western District of North Carolina to Nash Correctional Institution officials for mailing. Because Petitioner was incarcerated, the notice is considered filed on the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988). Accordingly, the Court finds as a matter of fact, and concludes as a matter of law, that Petitioner filed a timely notice of appeal on December 13, 2016. See Fed. R. App. P. 4(a)(1)(A).

IT IS, HEREBY, ORDERED that the Clerk of Court shall transmit a copy of this Order and a copy of the State's Response to the Fourth Circuit's Remand (Doc. No. 21) and Exhibit (Doc. No. 21-1) to the Fourth Circuit Court of Appeals to supplement the record in this action.

SO ORDERED.

Signed: August 2, 2017


Frank D. Whitney
Chief United States District Judge

