

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cv-00268-FDW**

JAMIER STEVEN HEARD,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF NORTH CAROLINA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court upon Remand from the Fourth Circuit Court of Appeals for the limited purpose of allowing this Court to determine whether Petitioner Jamier Steven Heard (“Petitioner”) is entitled to reopening of the appeal period. [Doc. 15].

On May 28, 2020, this Court entered an Order granting the Respondent’s Motion for Summary Judgment as to the Petition for Writ of Habeas Corpus filed under 28 U.S.C. § 2254 [Doc. 9]. Petitioner did not file his Notice of Appeal until August 18, 2020 [Doc. 11]. In his Notice of Appeal, Petitioner states that he did not timely receive notice of the Court’s Order, which the Fourth Circuit construes as a motion to reopen the appeal period pursuant to Fed. R. App. P. 4(a)(6).

Petitioner’s Notice of Appeal was mailed from Harnett Correctional Institution. Petitioner states that the institution has been on lockdown due to the Covid-19 pandemic and that mail has not been timely delivered. [Doc. 11]. The record reflects that the Order on Respondent’s Motion for Summary Judgment was mailed to Petitioner at Pamlico Correctional Institution on May 28, 2020, which is the address on file with this Court. Petitioner did not provide this Court with a notice of change of address.

The Court will, therefore, require the parties to submit affidavits concerning the following:

- (1) The date on which Petitioner was transferred to Harnett Correctional Institution;
- (2) The date on which Petitioner received the Court's May 28, 2020 Order on Respondent's Motion for Summary Judgment [Doc. 9];
- (3) The date on which Petitioner delivered his Notice of Appeal to prison officials for mailing;
- (4) Any logs or other records of prisoner mail that contain a record of the receipt of the Court's May 28, 2020 Order and record of the date of mailing of Petitioner's Notice of Appeal;
- (5) Any other records or information that may inform the Court's determination of whether the Petitioner should be entitled to reopening of the appeal period.

Petitioner is advised that an affidavit is a written statement under oath; that is, a statement prepared in writing and sworn to before a notary public. In the alternative, an unsworn statement, made and signed under penalty of perjury, may also be submitted.

IT IS, THEREFORE, ORDERED that the parties shall file affidavits within fourteen (14) days of the date of this Order in accordance with the terms of this Order. Failure of Petitioner to respond in accordance with this Order will result in this Court determining on remand that Petitioner's Notice of Appeal was untimely filed and that he is not entitled to a reopening of the appeal period.

IT IS SO ORDERED.

Signed: June 7, 2021



Frank D. Whitney
United States District Judge

