

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7313

JAMES PRESTON KAY,

Petitioner - Appellant,

versus

RON ANGELONE, Director of the Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CA-99-605-AM)

Submitted: November 20, 2000

Decided: December 4, 2000

Before WILKINS and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

James Preston Kay, Appellant Pro Se. Thomas Drummond Bagwell, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

James Preston Kay seeks to appeal the district court's order dismissing his habeas corpus petition filed pursuant to 28 U.S.C.A. § 2254 (West 1994 & Supp. 2000). We dismiss the appeal for lack of jurisdiction because Kay's notice of appeal was not timely filed.

Parties are accorded thirty days after entry of the district court's final judgment or order to note an appeal. Fed. R. App. P. 4(a)(1). There are three circumstances under which the deadline to note an appeal may be extended beyond thirty days from entry of judgment: 1) when the district court extends the appeal period under Fed. R. App. Proc. 4(a)(5); 2) when the district court re-opens the appeal period under Fed. R. App. P. 4(a)(6); or 3) when a party timely files any of the motions listed in Fed. R. App. P. 4(a)(4)(A). These strict time limitations placed on notices of appeal are "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on July 16, 1999. Although Kay's first notice of appeal was filed on July 23, 1999, and was therefore timely, he voluntarily dismissed that appeal on October 26, 1999, pursuant to Fed. R. App. P. 42(b). Kay filed an Amended Notice of Appeal on September 7, 2000, approximately one year and two months after entry of judgment by the district court and approximately eleven months after voluntarily dis-

missing his first appeal. Kay did not obtain an extension or reopening of the appeal period prior to filing his amended notice of appeal. Nor did he timely file any of the motions listed in Fed. R. App. P. 4(a)(4)(A). Accordingly, because Kay failed to file a notice of appeal within the appeal period, his appeal was not timely. Consequently, we deny a certificate of appealability and therefore dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and oral argument would not aid the decisional process.

DISMISSED