

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7191

HOWARD CLEVELAND, JR.,

Petitioner - Appellant,

versus

STEVE DOBSON,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (CA-00-641-1)

Submitted: October 4, 2001

Decided: October 12, 2001

Before NIEMEYER, LUTTIG, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Howard Cleveland, Jr., Appellant Pro Se. Clarence Joe DelForge, III, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Howard Cleveland, Jr., seeks to appeal the district court's order and judgment denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001). We dismiss the appeal for lack of jurisdiction because Appellant'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, see Fed. R. App. P. 4(a)(1), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "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 May 9, 2001. Cleveland's notice of appeal was filed on July 4, 2001, the earliest date Cleveland could have submitted the notice to prison officials for mailing. Because Appellant failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED