

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7117

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MELVIN ANTONIO BURL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (CR-99-176, CA-03-444-02)

Submitted: October 20, 2003

Decided: November 20, 2003

Before WIDENER, WILLIAMS, and TRAXLER, Circuit Judges.

Remanded by unpublished per curiam opinion.

Melvin Antonio Burl, Appellant Pro Se. James Ashford Metcalfe, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Melvin Antonio Burl seeks to appeal the district court's order denying his 28 U.S.C. § 2255 (2000) motion as untimely. Burl's § 2255 motion was received in the district court shortly after the expiration of the one-year limitations period. Under Houston v. Lack, 487 U.S. 266 (1988), and its progeny, a prisoner's § 2255 motion is considered filed as of the date he delivers it to prison officials for mailing. See Burns v. Morton, 134 F.3d 109, 112-13 (3d Cir. 1998). The record does not reveal when Burl delivered the motion for mailing to the court. Accordingly, we remand the case to the district court for the limited purpose of determining when Burl delivered his motion to prison officials for mailing. The record, as supplemented, will then be returned to this court for further consideration. 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.

REMANDED