

Rehearing granted, April 7, 2004

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7877

DONALD EUGENE MEDLIN,

Petitioner - Appellant,

versus

JAY CLARK,

Respondent - Appellee.

Appeal from the United States District Court for the Middle
District of North Carolina, at Durham. Paul Trevor Sharp,
Magistrate Judge. (CA-02-393-1)

Submitted: February 12, 2004

Decided: February 23, 2004

Before LUTTIG, WILLIAMS, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Bruce Tracy Cunningham, Jr., CUNNINGHAM, DEDMOND, PETERSEN & SMITH,
Southern Pines, North Carolina, for Appellant. Clarence Joe
DelForge, III, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA,
Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Donald Eugene Medlin seeks to appeal the magistrate judge's order dismissing his petition for habeas corpus filed pursuant to 28 U.S.C. § 2254 (2000).^{*} We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), 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. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The magistrate judge's order was entered on the docket on October 16, 2003. The notice of appeal was filed by Medlin's attorney on November 17, 2003. Because Medlin 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

^{*}This case was decided by magistrate judge upon consent of the parties under 28 U.S.C. § 636(c)(1) (2000).

materials before the court and argument would not aid the decisional process.

DISMISSED