

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7123

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ETON ROSE, a/k/a Tony Barrett,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., Chief District Judge. (CR-01-421; CA-03-613-1)

Submitted: November 3, 2004

Decided: November 19, 2004

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Eton Rose, Appellant Pro Se. Sandra Jane Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Eton Rose seeks to appeal the denial of relief on his motion filed under 28 U.S.C. § 2255 (2000). The notice of appeal was received in the district court approximately seven days after the expiration of the appeal period. Under Fed. R. App. P. 4(c)(1) and Houston v. Lack, 487 U.S. 266 (1988), the notice is considered filed as of the date Rose properly delivered it to prison officials for mailing to the court. The record does not reveal if or when Rose complied with the requirements of Fed. R. App. P. 4(c)(1).^{*} Accordingly, we remand the case for the district court to obtain this information from the parties and to determine whether the filing was timely under Fed. R. App. P. 4(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED

^{*}Although Rose indicates that he signed the notice of appeal on June 26, 2004, it is not clear whether he submitted the notice to prison officials in a timely manner or whether he even utilized his institution's internal mail system.