

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-6712**

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SPENCER LAMONT STACEY,

Petitioner - Appellant,

versus

THEODIS BECK, Secretary, North Carolina  
Department of Corrections,

Respondent - Appellee.

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Appeal from the United States District Court for the Middle  
District of North Carolina, at Durham. William L. Osteen, District  
Judge. (CA-04-664-1-WLO)

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Submitted: September 30, 2005

Decided: October 13, 2005

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Before KING, GREGORY, and DUNCAN, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Spencer Lamont Stacey, Appellant Pro Se. Sandra Wallace-Smith,  
Assistant Attorney General, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Spencer Lamont Stacey seeks to appeal the dismissal of his 28 U.S.C. § 2254 (2000) petition entered on March 3, 2005. Stacey, however, did not file his notice of appeal until April 29, 2005,\* which is outside the thirty day appeal period under Fed. R. App. P. 4(a)(1)(A). The 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)).

We construe Stacey's pro se notice of appeal, in which he indicated his intent to appeal and alleged that he did not timely receive notice of his action being dismissed, as a motion to reopen the time to note an appeal under Fed. R. App. P. 4(a)(6). See United States v. Feuer, 236 F.3d 725, 729 & n.7 (D.C. Cir. 2001). Accordingly, we remand the case to the district court for it to determine whether Stacey satisfies the requirements of Fed. R. App. P. 4(a)(6). Ogden v. San Juan County, 32 F.3d 452, 454 (10th Cir. 1994). The record, as supplemented, then will be returned to this court for further consideration.

REMANDED

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\*This court has given Stacey the benefit of the "prison mailbox" rule, Houston v. Lack, 487 U.S. 266 (1988), regarding the filing date of this document.