

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7939

ROBERT C. SHROUT,

Petitioner - Appellant,

versus

EVELYN SEIFERT, Warden; NORTHERN REGIONAL JAIL
AND CORRECTIONAL FACILITY,

Respondents - Appellees.

Appeal from the United States District Court for the Northern
District of West Virginia, at Clarksburg. W. Craig Broadwater,
District Judge. (CA-03-239)

Submitted: August 31, 2006

Decided: September 5, 2006

Before MICHAEL, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert C. ShROUT, Appellant Pro Se. Dawn Ellen Warfield, OFFICE OF
THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia,
for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Robert C. Shrout seeks to appeal the district court's order adopting the report of the magistrate judge and dismissing Shrout's 28 U.S.C. 2254 (2000) petition as successive. 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 district court's order was entered on the docket on October 13, 2005. The notice of appeal was filed on November 25, 2005, forty-three days later.* Because Shrout failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We deny Shrout's motion for appointment of counsel. We dispense with oral argument because

*For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED