

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7919

LACY JERVAY TATE,

Plaintiff - Appellant,

versus

JOHNATHON A. HART; DEBRORAH CROWDER,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (5:06-ct-03067-H)

Submitted: April 11, 2007

Decided: May 25, 2007

Before TRAXLER, GREGORY, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Lacy Jervay Tate, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lacy Jervay Tate, a North Carolina pre-trial detainee, seeks to appeal the district court's order dismissing his 42 U.S.C. § 1983 (2000) action without prejudice. The notice of appeal was received in the district court shortly after the expiration of the appeal period. Because Tate is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). The record does not conclusively reveal when Tate gave the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing 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