

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6138

MICHAEL DEQUINCY ALLEN,

Petitioner - Appellant,

v.

CAROL WALLACE, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Leonie M. Brinkema,
District Judge. (1:08-cv-00663-LMB-TRJ)

Submitted: July 10, 2009

Decided: July 16, 2009

Before MICHAEL, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael DeQuincy Allen, Appellant Pro Se. Alice Theresa
Armstrong, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael DeQuincy Allen seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2006) petition. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In actions in which the United States is not a party, litigants 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)); see Bowles v. Russell, 551 U.S. 205, _____, 127 S. Ct. 2360, 2366 (2007) ("Today we make clear that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement."). Furthermore, "[a] bare notice of appeal should not be construed as a motion for extension of time, where no request for additional time is manifest." Shah v. Hutto, 722 F.2d 1167, 1168-69 (4th Cir. 1983) (en banc).

The district court's order was entered on the docket on December 16, 2008. Allen v. McDonald, No. 1:08-cv-00663-LMB-TRJ (E.D. Va. Dec. 16, 2008). The notice of appeal was filed on

January 20, 2009, at the earliest.* Because Allen failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

* 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. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988).