

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6950

ROBERT PEOPLES,

Plaintiff - Appellant,

v.

LEON DAVIS, Sgt. at Lieber Correctional Institution; THIERRY D. NETTLES, AIE, Lieber Correctional Institution; JEAN RANDAL, IGC, Lieber Correctional Institution; GARY MANIGAULT, Lieber Correctional Institution; DARRYL MCGEE, Lt. at Lieber Correctional Institution; JOYCE PERRY, Sgt. at Lieber Correctional Institution; HALLBACK, Officer at Lieber Correctional Institution,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Cameron McGowan Currie, District Judge. (8:08-cv-00252-CMC)

Submitted: January 19, 2010

Decided: January 26, 2010

Before NIEMEYER, KING, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Peoples, Appellant Pro Se. Andrew Todd Darwin, Ginger Goforth, HOLCOMBE, BOMAR, GUNN & BRADFORD, PA, Spartanburg, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Peoples seeks to appeal the district court's order adopting the magistrate judge's recommendation and denying relief on his 42 U.S.C. § 1983 (2006) complaint and the district court's order denying relief on his Fed. R. Civ. P. 59(e) motion. 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 denying the Rule 59 motion was entered on the docket on March 13, 2009.¹ The notice of appeal was filed on April 30, 2009.² Because Peoples failed to

¹ Peoples' Rule 59(e) motion tolled the time period for filing the notice of appeal as to the earlier order. See Fed. R. App. P. 4(a)(4).

² 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).

file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. Peoples' motion for appointment of counsel is denied. 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