

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-6135

WILLIE COLEY,

Petitioner - Appellant,

v.

HAROLD CLARKE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:14-cv-00120-AWA-DEM)

Submitted: June 29, 2015

Decided: July 9, 2015

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Willie Coley, Appellant Pro Se. Lauren Catherine Campbell, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Willie Coley seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2012) petition. His notice of appeal was received in the district court shortly after expiration of the appeal period. Because Coley is incarcerated, the notice is considered filed as of the date it was 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 (1988). The record does not conclusively reveal when Coley delivered the notice of appeal to prison officials for mailing. Accordingly, we grant leave to proceed in forma pauperis and 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