

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 15-6489**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL PRESTON MCCLAIN,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Henry M. Herlong, Jr., Senior District Judge. (7:11-cr-00477-HMH-1; 7:14-cv-02671-HMH)

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Submitted: August 6, 2015

Decided: August 17, 2015

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Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Michael Preston McClain, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Preston McClain, a federal prisoner, seeks to appeal the district court's order granting the Government's motion for summary judgment and dismissing his 28 U.S.C. § 2255 (2012) motion to vacate. Parties in a civil action in which the United States is a party have sixty days following entry of the judgment in which to file a notice of appeal. Fed. R. App. P. 4(a)(1)(B). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

Because McClain is incarcerated, the notice of appeal is considered filed on 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, 276 (1988). The record does not conclusively reveal when McClain delivered 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