

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-6451

BOBBY JOE MCGEE,

Petitioner - Appellant,

versus

ATTORNEY GENERAL OF THE STATE OF SOUTH
CAROLINA,

Respondent - Appellee.

Appeal from the United States District Court for the District of
South Carolina, at Charleston. Dennis W. Shedd, District Judge.
(CA-96-87-2-19AJ)

Submitted: July 24, 1997

Decided: August 7, 1997

Before HAMILTON, LUTTIG, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Bobby Joe McGee, Appellant Pro Se. Donald John Zelenka, Chief
Deputy Attorney General, Lauri J. Soles, OFFICE OF THE ATTORNEY
GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's order denying his motion for an extension of time to file a notice of appeal in his 28 U.S.C.A. § 2254 (West 1994 & Supp. 1997) action. Under Fed. R. App. P. 4(a)(5), the district court may extend the time for filing a notice of appeal if the appellant files a motion for such an extension no later than thirty days after the appeal period has expired. A decision whether to extend the appeal period lies within the discretion of the district court and will not be disturbed absent a showing of an abuse of discretion. Thompson v. E.I. DuPont de Nemours & Co., 76 F.3d 530, 534 (4th Cir. 1996). Here, the district court entered its final order on September 4, 1996. Appellant did not file his motion for an extension of time to file a notice of appeal until February 5, 1997, well beyond the November 4, 1996, deadline for filing such a motion. Fed. R. App. P. 4(a)(5). Because the district court did not exceed its discretion in denying Appellant's motion for an extension of time for filing a notice of appeal, we deny a certificate of appealability and dismiss. 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