

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-7201**

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EDGAR LEON APPLEWHITE,

Plaintiff - Appellant,

versus

GEORGE WILT; NURSE KNIGHT,

Defendants - Appellees,

and

HARNETT CORRECTIONAL CENTER,

Defendant.

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**No. 97-7202**

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EDGAR LEON APPLEWHITE,

Plaintiff - Appellant,

versus

JAMES B. HUNT, JR.,

Defendant - Appellee.

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Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge; Joseph C. Howard, District Judge. (CA-96-815-5-CT-B03, CA-97-449-5-CT-H3)

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Submitted: December 11, 1997                      Decided: December 31, 1997

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Before HALL and WILLIAMS, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Edgar Leon Applewhite, Appellant Pro Se. William McBlief, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In appeal No. 97-7201, Appellant, a North Carolina inmate, filed an untimely notice of appeal. We dismiss for lack of jurisdiction. The time periods for filing notices of appeal are governed by Fed. R. App. P. 4. These periods are "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). Parties to civil actions have thirty days within which to file in the district court notices of appeal from judgments or final orders. See Fed. R. App. P. 4(a)(1). The only exceptions to the appeal period are when the district court extends the time to appeal under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). The district court entered its order on July 14, 1997; Appellant's notice of appeal was filed on August 20, 1997, which is beyond the thirty-day appeal period. Appellant's failure to note a timely appeal or obtain an extension of the appeal period leaves this court without jurisdiction to consider the merits of Appellant's appeal. We therefore dismiss the appeal.

In appeal No. 97-7202, Appellant appeals the district court's order denying relief on his 42 U.S.C. § 1983 (1994) complaint under 28 U.S.C.A. § 1915A (West Supp. 1997), (formerly 28 U.S.C. § 1915(d) (1994)). We have reviewed the record and the district court's opinion accepting the magistrate judge's recommendation and find that this appeal is frivolous. Accordingly, we dismiss the appeal on the reasoning of the district court. Applewhite v. Hunt, No. CA-97-449-5-CT-H3 (E.D.N.C. Aug. 11, 1997).

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