

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 99-2134**

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CHRISTOPHER A. BURKE,

Plaintiff - Appellant,

versus

G. T. WILLIAMS; L. A. CORNER, Court and Legal Services; E.M.G., Court and Legal Services; MS. MORTON, Records Dept., Lunenburg Correctional Center; E. PRESTON GRISSOM, Judge, First Judicial Circuit of Virginia; RANNIE C. BROWN, Secretary of Judge,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca B. Smith, District Judge. (CA-99-863)

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Submitted: December 16, 1999

Decided: December 27, 1999

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Before MURNAGHAN and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Christopher A. Burke, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Christopher Burke seeks to appeal the district court's order dismissing without prejudice his complaint alleging violations of due process and equal protection. Burke has filed a motion in this court to enjoin the Virginia Department of Corrections and the Circuit Courts of Chesapeake from executing Burke's plea agreement. We deny his motion and dismiss the appeal.

The district court dismissed Burke's complaint without prejudice because Burke failed to comply with the court's order to file answers to interrogatories designed to particularize his complaint. Such dismissal without prejudice is not generally appealable. See Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993).

Furthermore, we lack jurisdiction because Burke's notice of appeal was not timely filed. The district court's order was entered on its docket on July 19, 1999. Burke's notice of appeal was filed on August 19, 1999. Parties are accorded thirty days after entry of the district court's final judgment or order to note an appeal, see Fed. R. App. P. 4(b)(1), 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. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). Because Burke

failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we lack jurisdiction over the appeal.

For these reasons, we dismiss Burke's appeal and deny his motion for injunctive relief. 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