

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 99-6804**

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DAVID KYLE HAIRSTON,

Petitioner - Appellant,

versus

COMMONWEALTH OF VIRGINIA,

Respondent - Appellee.

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Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, Chief District Judge. (CA-98-682-7)

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Submitted: August 5, 1999

Decided: August 11, 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Dismissed by unpublished per curiam opinion.

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David Kyle Hairston, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Kyle Hairston seeks to appeal the district court's final order dismissing his habeas corpus petition without prejudice for failing to exhaust state remedies. We dismiss the appeal for lack of jurisdiction because Hairston's notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, see Fed. R. App. P. 4(a)(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)).

The district court's final order was entered on the docket on November 4, 1998. Hairston's notice of appeal was filed on June 8, 1999.\* Because he failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are

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\* We assume that the date indicated on the notice of appeal was the date Hairston deposited the notice of appeal in the prison institution's internal mail system. See Fed. R. App. P. 4(c)(1).

adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED