

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-7608

MARVIN JEROME DAMON,

Petitioner - Appellant,

versus

RICHARD CULLEN,

Respondent - Appellee.

No. 00-6021

MARVIN JEROME DAMON,

Petitioner - Appellant,

versus

RICHARD CULLEN,

Respondent - Appellee.

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CA-99-97)

Submitted: April 27, 2000

Decided: May 10, 2000

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

Dismissed by unpublished per curiam opinion.

Marvin Jerome Damon, Appellant Pro Se. Mary Kathleen Beatty Martin, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Marvin Jerome Damon seeks to appeal from the district court's decision in a petition under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1999). In No. 99-7608, Damon seeks to appeal the denial of his motion to reconsider the judgment dismissing his habeas petition. We review the district court's action on such motions for abuse of discretion. Pacific Ins. Co. v. American Nat'l Fire Ins. Co., 148 F.3d 396, 402 (4th Cir. 1998). The district court carefully reviewed and rejected Damon's arguments in his motion. His ruling is not an abuse of discretion.

In No. 00-6021, Damon seeks to appeal the district court's original denial of the habeas petition. Judgment was entered on August 10, 1999. The district court denied the Rule 59 motion on October 21, 1999. Damon's notice of appeal from the August judgment was dated December 9, 1999, forty-nine days after entry of the Rule 59 order and four months after the original judgment.

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(a)(1)(B), 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). The 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 Damon failed to file a timely notice of

appeal or to obtain an extension or reopening of the appeal period, we must dismiss the appeal.

Accordingly, as to both No. 99-7608 and No. 00-6021, we deny a certificate of appealability and dismiss the appeal. 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