

Panel rehearing granted and case
dismissed by unpublished order
filed 4/20/01

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7304

ROCKY LEE STALEY,

Petitioner - Appellant,

versus

JOYCE K. CONLEY, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Middle Dis-
trict of North Carolina, at Durham. P. Trevor Sharp, Magistrate
Judge. (CA-00-639)

Submitted: January 11, 2001

Decided: January 17, 2001

Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Rocky Lee Staley, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Rocky Lee Staley seeks to appeal the magistrate judge's order denying relief on his petition filed pursuant to 28 U.S.C.A. § 2254 (West 1994 & Supp. 2000). We dismiss the appeal for lack of jurisdiction because Staley's notice of appeal was not timely filed.

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), 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 order was entered on the docket on July 6, 2000. Staley's notice of appeal was filed on September 8, 2000. Because Staley failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny leave to proceed in forma pauperis, 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