

ON PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7309

KENNETH BRIAN JOYNER,

Petitioner - Appellant,

versus

RONALD J. ANGELONE, Director,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (CA-01-1189-AM)

Submitted: June 10, 2003

Decided: June 26, 2003

Before MOTZ, TRAXLER, and KING, Circuit Judges.

Remanded by unpublished per curiam opinion.

Kenneth Brian Joyner, Appellant Pro Se. Donald Eldridge Jeffrey, III, 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Unpublished opinions are not binding precedent in this circuit.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:

Kenneth Joyner seeks to appeal the district court's order denying relief on his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (2000). The district court dismissed Joyner's petition in an order entered on June 17, 2002, and Joyner mailed a misdirected notice of appeal to the United States Court of Appeals for the Federal Circuit on July 15, 2002. Joyner discovered his mistake, and on August 15, 2002, within the period of time applicable to a determination of excusable neglect under Fed. R. App. P. 4(a)(5), Joyner mailed a motion to this court seeking to amend his notice of appeal to reflect the appropriate court. We forwarded the motion to the district court. See Fed. R. App. P. 4(d). We construe this motion as one expressing Joyner's desire to preserve his appeal. See Meyers v. Stephenson, 781 F.2d 1036, 1038-39 (4th Cir. 1986). Accordingly, because the district court has not ruled on Joyner's motion, we remand to the district court for the limited purpose of permitting that court to determine whether Joyner has shown excusable neglect warranting an extension of the appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED