

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6447

MICHAEL O. DEVAUGHN,

Plaintiff - Appellant,

versus

MARK C. MOORE, Assistant United States
Attorney; ISAAC JOHNSON, JR., Assistant United
States Attorney; PAUL RIVERS, United States
Marshall; DARNELL MCCALL, Chief of Anderson
City Detention Center,

Defendants - Appellees.

No. 04-7181

MICHAEL O. DEVAUGHN,

Plaintiff - Appellant,

versus

MARK C. MOORE, Assistant United States
Attorney; ISAAC JOHNSON, JR., Assistant United
States Attorney; PAUL RIVERS, United States
Marshall; DARNELL MCCALL, Chief of Anderson
City Detention Center,

Defendants - Appellees.

Appeals from the United States District Court for the District of South Carolina, at Charleston. Margaret B. Seymour, District Judge. (CA-02-883)

Submitted: November 4, 2004

Decided: November 9, 2004

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Dismissed in part, affirmed in part, by unpublished per curiam opinion.

Michael O. DeVaughn, Appellant Pro Se. Barbara Murcier Bowens, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Michael O. DeVaughn seeks to appeal the district court's orders denying relief on his action alleging violations under 42 U.S.C. § 1983 (2000) and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 319 (1989), and his motion to reconsider. Regarding the district court's order dismissing the action, we dismiss the appeal for lack of jurisdiction because DeVaughn's notice of appeal was not timely filed.

Parties are accorded sixty days if the United States is a party 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). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order dismissing DeVaughn's action was entered on the docket on October 1, 2003. DeVaughn's notice of appeal was filed on February 24, 2004.* Because DeVaughn failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss this portion of the appeal.

*This date gives DeVaughn the benefit of Houston v. Lack, 487 U.S. 266 (1988).

Regarding DeVaughn's timely appeal of the district court's order denying his motion to reconsider under Fed. R. Civ. P. 60(b), we do not find that the district court abused its discretion in denying relief. CNF Constructors, Inc. v. Donohoe Constr. Co., 57 F.3d 395, 401 (4th Cir. 1995) (providing standard of review). Accordingly, we affirm this portion of 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 IN PART,
AFFIRMED IN PART