

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6367

JEFFREY S. CRANK,

Plaintiff - Appellant,

versus

LIEUTENANT DURANT, Kershaw Correctional
Institution; CORRECTIONAL OFFICER COX, Kershaw
Correctional Institution; CORRECTIONAL OFFICER
PITTMAN, Kershaw Correctional Institution,

Defendants - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Beaufort. David C. Norton, District Judge.
(CA-04-1471-DCN)

Submitted: August 17, 2005

Decided: February 9, 2006

Before LUTTIG, WILLIAMS, and SHEDD, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Jeffrey S. Crank, Appellant Pro Se. Ruskin C. Foster, L. Susan
Foxworth, Matthew Penn Engen, MCCUTCHEN, BLANTON, JOHNSON &
BARNETTE, LLP, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jeffrey S. Crank appeals from the district court's order adopting the recommendation of the magistrate judge and dismissing Crank's 42 U.S.C. § 1983 (2000) complaint as frivolous under 28 U.S.C. § 1915A (2000). Although we express no opinion regarding the merits of Crank's suit, we vacate the district court's order and remand for further proceedings.

The magistrate judge's recommendation was entered on December 29, 2004. On January 24, 2005, Crank filed a motion for extension of time in which to file objections. The motion was executed on January 10, stamped by prison officials on January 20, and postmarked January 21. The district court denied the motion as untimely filed and did not consider Crank's subsequently filed objections.

Timely objections were due by January 19. Under Houston v. Lack, 487 U.S. 266, 276 (1988), Crank's motion for extension of time to object was deemed filed when he handed it to prison officials for mailing. It is unclear from the record whether Crank's motion was filed prior to the expiration of the objection period.

Thus, we vacate the district court's order and remand for a determination of the date Crank filed his motion to extend time. Should the district court determine that the motion was timely filed, it should reconsider its decision. Again, we express no

opinion on the merits of either the motion to extend or the underlying suit. We grant Crank's motion to amend and deny his motions for injunction and appointment of counsel. 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.

VACATED AND REMANDED