

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-6660

ALBERT CHARLES BURGESS, JR.,

Petitioner - Appellant,

versus

PARKER EVATT; STATE OF SOUTH CAROLINA,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. William B. Traxler, Jr., District Judge. (CA-88-2828-3-21)

Submitted: March 21, 1996

Decided: April 29, 1996

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

Dismissed by unpublished per curiam opinion.

Albert Charles Burgess, Jr., Appellant Pro Se. Donald John Zelenka, Chief Deputy Attorney General, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant seeks to appeal the district court's orders declining to reconsider the dismissal of his 28 U.S.C. § 2254 (1988) petition pursuant to Fed. R. Civ. P. 60(b) and Fed. R. Civ. P. 59(e). We have reviewed the record and the district court's orders and find no reversible error. Accordingly, we deny a certificate of probable cause to appeal and dismiss the appeal on the reasoning of the district court. Burgess v. Evatt, No. CA-88-2828-3-21 (D.S.C. Feb. 16, 1995; Mar. 30, 1995).

Further, to the extent that Appellant seeks to again have this court review the propriety of the 1990 dismissal of his § 2254 petition, see Burgess v. Evatt, No. 90-6864(L) (4th Cir. Apr. 3, 1991) (unpublished), Appellant's notice of appeal is untimely. Fed. R. App. P. 4(a)(1) & (4). The time periods established by Fed. R. App. P. 4 are "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 entered its order on July 16, 1990; Appellant's notice of appeal was filed on April 28, 1995. Appellant's failure to note a timely appeal or obtain an extension of the appeal period deprives this court of jurisdiction to consider this case.

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