

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-6652

THOMAS R. MORKE,

Petitioner - Appellant,

versus

ELLIS B. WRIGHT, JR., Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, Chief District Judge. (CA-94-42-R)

Submitted: May 29, 1998

Decided: July 16, 1998

Before WILKINS, HAMILTON, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Thomas R. Morke, Appellant Pro Se. Thomas Drummond Bagwell, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant Thomas Morke noted his appeal on May 5, 1997 of three district court orders. Morke's appeal from two of the orders, entered on November 5, 1996 and January 31, 1997, is untimely. The time periods for filing notices of appeal are governed by Fed. R. App. P. 4. These periods 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)). Parties to civil actions have thirty days within which to file in the district court notices of appeal from judgments or final orders. Fed. R. App. P. 4(a)(1). The only exceptions to the appeal period are when the district court extends the time to appeal under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). Morke's failure to file his notice of appeal as to these two orders within the thirty-day appeal period or to obtain an extension of the appeal period deprives us of jurisdiction to review these orders. We deny a certificate of probable cause and dismiss the appeal as to these orders.

Morke's appeal of the district court's order denying his Rule 60(b) motion for relief from judgment, however, is timely. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of probable cause and dismiss the appeal on the reasoning of the district court. Morke v. Wright, No. CA-94-42-R (W.D. Va. Apr. 17, 1997). 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