

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 23-6139**

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DWAYNE ANTHONY HAIRSTON, a/k/a Dwyne Hairston,

Petitioner - Appellant,

v.

MR. PRUTTING, Warden,

Respondent - Appellee.

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Appeal from the United States District Court for the Western District of Virginia, at  
Roanoke. Elizabeth Kay Dillon, District Judge. (7:21-cv-00441-EKD-JCH)

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Submitted: August 29, 2023

Decided: September 1, 2023

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Before KING, AGEE, and BENJAMIN, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Dwayne Anthony Hairston, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwayne Anthony Hairston seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 petition. In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), 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).

Here, the district court entered its opinion and order dismissing Hairston's petition on December 6, 2022. Hairston filed the notice of appeal on February 13, 2023, outside of the appeal period. However, based on the document Hairston attached to his notice of appeal, it appears that he had previously sent a letter to the district court regarding an appeal to this court. Hairston's letter is not in the record and, therefore, the record does not indicate whether Hairston timely appealed the district court's order, or whether Hairston sought to extend or reopen the appeal period. We therefore remand this case for the limited purpose of allowing the district court to determine whether Hairston filed a timely notice of appeal under Fed. R. App. P. 4(a). The record, as supplemented, will then be returned to this court for further consideration.

*REMANDED*