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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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August 29, 2006

TO: Andrew T. Swinton
Donald John Zelenka, Esq.

Enclosed is a copy of the Court's decision in

Case Number(s): 06-6964

PATRICIA S. CONNOR
CLERK

Enclosure(s)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6964

ANDREW T. SWINTON,

Petitioner - Appellant,

versus

JON OZMINT, Director of SC Department of
Corrections; HENRY MCMASTER, Attorney General
for South Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Florence. G. Ross Anderson, Jr., District
Judge. (4:05-cv-2826-GRA)

Submitted: August 9, 2006

Decided: August 29, 2006

Before NIEMEYER, WILLIAMS, and GREGORY, Circuit Judges.

Remanded by unpublished per curiam opinion.

Andrew T. Swinton, 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Unpublished opinions are not binding precedent in this circuit.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:

Andrew T. Swinton seeks to appeal the district court's order accepting the magistrate judge's recommendation and dismissing as untimely Swinton's petition filed under 28 U.S.C. § 2254 (2000). The notice of appeal was received in the district court shortly after expiration of the appeal period. Because Swinton is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). The record does not reveal when Swinton gave the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to obtain this information from the parties and to determine whether the filing was timely under Rule 4(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED