

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6550

JERRY GLENN KILLEN,

Petitioner - Appellant,

v.

BRYAN WATSON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Senior District Judge. (7:08-cv-00025-jct-mfu)

Submitted: June 13, 2008

Decided: July 16, 2008

Before NIEMEYER and SHEDD, Circuit Judges, and WILKINS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jerry Glenn Killen, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jerry Glenn Killen seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2000) petition as untimely. In a civil case in which the United States is not a party, a notice of appeal must be filed within thirty days after the entry of the district court's order. See Fed. R. App. P. 4(a)(1)(A). The district court may extend the time to file a notice of appeal if a party requests such an extension within thirty days after expiration of the appeal period and demonstrates excusable neglect or good cause. Fed. R. App. P. 4(a)(5)(A). The district court may also reopen the appeal period pursuant to Fed. R. App. P. 4(a)(6). To move for an extension of the appeal period, an appellant must file a separate motion for extension, unless his notice of appeal includes a manifest request for additional time. See Washington v. Bumgarner, 882 F.2d 899, 900-01 (4th Cir. 1989). A bare notice of appeal filed within the excusable neglect period cannot serve as a motion for extension of time under Rule 4(a)(5). Shah v. Hutto, 722 F.2d 1167, 1168-69 (4th Cir. 1983).

The district court dismissed Killen's § 2254 petition on February 29, 2008. Following the dismissal, Killen filed a document with this court that was construed as a notice of appeal and forwarded to the district court. The document was received by this court on April 7, 2008; pursuant to Fed. R. App. P. 4(d), this serves as the date on which the notice of appeal is considered to

have been filed.* Because Killen failed to file a timely notice of appeal or obtain an extension or reopening of the appeal period, we dismiss the appeal as untimely. 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

*The notice of appeal appears to have been mailed on April 3, 2008; however, there is no indication in the record as to when this document was executed or given to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 276 (1988) (motion is considered filed on date it was given to prison officials for mailing).