

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-6054**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERICKA L. FLOOD, a/k/a Ericka Lomick,

Defendant - Appellant.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Charlotte. Max O. Cogburn, Jr.,  
District Judge. (3:10-cr-00124-MOC-2; 3:12-cv-00186-MOC)

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Submitted: May 8, 2013

Decided: May 13, 2013

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Before MOTZ, KING, and DUNCAN, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Ericka L. Flood, Appellant Pro Se. Kurt William Meyers,  
Assistant United States Attorney, Charlotte, North Carolina, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ericka L. Flood seeks to appeal the district court's order granting the Government's motion for summary judgment and dismissing her 28 U.S.C.A. § 2255 (West Supp. 2012) motion. Although the docketed notice of appeal was received well outside the expiration of the appeal period, Flood indicates that she previously delivered her notice of appeal to prison officials on August 15, 2012, only seven days after the district court entered its order and well within the sixty-day appeal period. Fed. R. App. P. 4(a)(1)(B). Because Flood 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 conclusively reveal when Flood delivered 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 Fed. R. App. P. 4(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED