

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8319

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DWAYNE FERGUSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:04-cr-00013-REP-1)

Submitted: January 13, 2009

Decided: January 20, 2009

Before WILLIAMS, Chief Judge, and TRAXLER and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Dwayne Ferguson, Appellant Pro Se. Stephen David Schiller, Olivia N. Hawkins, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwayne Ferguson appeals the district court order denying his Fed. R. Crim. P. 33 motion for a new trial. We have reviewed the record and find no reversible error.

Ferguson filed his motion for a new trial over four years after the jury returned its guilty verdict and more than three years after the judgment of conviction was entered. A motion for a new trial based on newly discovered evidence must be filed within three years after the finding of guilt. Ferguson exceeded the time limit provided by Fed. R. Crim. P. 33. Therefore, the district court properly denied the motion.

Accordingly, we affirm for the order of the district court. 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.

AFFIRMED