

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6427

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARJIL LEE BERGARA, a/k/a Michael Bergara, a/k/a Michael
Begera,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of Virginia, at Abingdon. James P. Jones, Chief
District Judge. (1:05-cr-00053-jpj-mfu-1; 1:08-cv-80041-jpj-mfu)

Submitted: August 20, 2009

Decided: August 28, 2009

Before MICHAEL and KING, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Marjil Lee Bergara, Appellant Pro Se. Steven Randall Ramseyer,
Assistant United States Attorney, Abingdon, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marjil Lee Bergara seeks to appeal the district court's order denying his 28 U.S.C.A. § 2255 (West Supp. 2009) motion. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), 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). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on December 17, 2008. The notice of appeal was filed on February 27, 2009.* Because Bergara failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny leave to proceed in forma pauperis, deny Bergara's motion to supplement his informal brief, and dismiss

* For the purpose of this appeal, we assume that the date appearing on the certificate of service with the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266, 267 (1988).

the appeal. 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