

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7739

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHNNIE LEON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (CR-01-92; CA-03-382)

Submitted: February 16, 2006

Decided: February 22, 2006

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

Dismissed by unpublished per curiam opinion.

Johnnie Leon, Appellant Pro Se. John Staige Davis, V, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Johnnie Leon seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2000) 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). This appeal period is "mandatory and jurisdictional." Browder v. Director., Dep't of Corr., 434 U.S. 257, 264 (1978).

The district court's order denying relief on Leon's § 2255 motion was entered July 14, 2005. The notice of appeal was filed on October 27, 2005.* Because Leon failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny his motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately

*For the purpose of this appeal, we assume the date appearing on 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 (1988).

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED