

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6045

MARLIN DAVIS, a/k/a Marlon Davis,

Petitioner - Appellant,

versus

MATTHEW B. HAMIDULLAH, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Henry F. Floyd, District Judge.
(CA-04-666-3-HFF)

Submitted: August 25, 2006

Decided: September 15, 2006

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

Dismissed by unpublished per curiam opinion.

William VanDercreek, Tallahassee, Florida, for Appellant.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Marlin Davis seeks to appeal the district court's orders accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2241 (2000) petition and denying his subsequent Fed. R. Civ. P. 59(e) motion. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties in a civil action in which the United States or a federal agency is a party are accorded sixty days after the entry of the district court's final judgment or order to note an appeal, 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) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's final order denying Davis' timely filed Rule 59(e) motion was entered on the docket on August 2, 2005. The notice of appeal, which Davis dated December 26, 2005, was late. Because Davis has failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We deny Davis' motion to invite the United States Attorney to file a brief on behalf of Appellee Hamidullah. 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