

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-6099**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FRANKLYN G. NELSON,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Senior District Judge. (3:99-cr-154-5-MU)

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Submitted: September 28, 2006

Decided: October 5, 2006

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Before NIEMEYER, TRAXLER, and SHEDD, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Franklyn G. Nelson, Appellant Pro Se. Thomas Gray Walker, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Franklyn G. Nelson seeks to appeal either the district court's order entering judgment in his criminal case or a subsequent order denying his motion to modify his sentence. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed as to either order.

A notice of appeal from a criminal judgment must be filed within ten days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A)(I). An additional thirty days are permissible upon showing of excusable neglect. These appeal periods are mandatory and jurisdictional. Smith v. Barry, 502 U.S. 244, 248 (1992).

The district court's judgment order was entered on the docket on December 11, 2000, and the order denying the motion for modification of sentence was entered on August 17, 2001. The notice of appeal was filed on January 19, 2006. Because Nelson's notice of appeal was filed beyond the appeal period and the excusable neglect period as to both orders, we dismiss 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