

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-6383**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PHILLIP AUBREY IRVING,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Senior District Judge. (7:04-cr-00078-jct)

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Submitted: September 29, 2006                      Decided: December 20, 2006

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

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Dismissed by unpublished per curiam opinion.

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Phillip Aubrey Irving, Appellant Pro Se. Edward Albert Lustig, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Phillip Aubrey Irving seeks to appeal the district court's order denying his motion for specific performance in his criminal case. In criminal cases, the defendant must file the notice of appeal within ten days after the entry of the order being appealed. Fed. R. App. P. 4(b)(1)(A)(i). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to thirty days to file a notice of appeal. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered its order on December 16, 2005. The notice of appeal was filed on February 9, 2006. Because Irving failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the appeal. We deny as moot Irving's motion to expedite this 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