

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7309

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LINO H. HAYNES, a/k/a Loni Haynes, a/k/a Nino,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:90-cr-00105-HCM-1)

Submitted: November 21, 2006

Decided: December 1, 2006

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

Dismissed by unpublished per curiam opinion.

Lino H. Haynes, Appellant Pro Se. Laura Marie Everhart, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lino H. Haynes seeks to appeal the district court's May 11, 2004 order granting in part and denying in part his Fed. R. Crim. P. 35(a) motion. In criminal cases, the defendant must file the notice of appeal within ten days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A); see United States v. Little, 392 F.3d 671, 680-81 (4th Cir. 2004) (applying ten-day appeal period to appeal from Rule 35 ruling). 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 time period cannot be extended beyond that forty-day time period. See Little, 392 F.3d at 681-82 (holding Rule 4(b) is jurisdictional; district court cannot extend time by republishing order so that litigant can file timely appeal, despite lack of notice).

The district court entered its order on May 11, 2004. The notice of appeal was filed on July 3, 2006. Haynes failed to file a timely notice of appeal, and the district court lacks jurisdiction to grant Haynes's motion to reopen and allow him to note an appeal from the 2004 order. Therefore, we dismiss the appeal for lack of jurisdiction. 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