

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-8029

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EZELL MCKELVER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Patrick Michael Duffy, District Judge. (5:03-cr-00262-PMD)

Submitted: April 26, 2007

Decided: May 2, 2007

Before WILLIAMS, MICHAEL, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Ezell McKelver, Appellant Pro Se. Leesa Washington, OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ezell McKelver appeals the district court's margin order denying McKelver's Fed. R. Civ. P. 60(b) motion to reconsider his August 2003 criminal judgment. McKelver filed neither a direct appeal nor a 28 U.S.C. § 2255 (2000) motion, and he filed his Rule 60(b) motion more than three years after the district court entered judgment on his conviction and sentence.

Although "the Federal Rules of Criminal Procedure do not specifically provide for motions for reconsideration and prescribe the time in which they must be filed," Nilson Van & Storage Co. v. Marsh, 755 F.2d 362, 364 (4th Cir. 1985), a motion for rehearing or reconsideration in a criminal case extends the time for filing a notice of appeal if the motion is filed before the order sought to be reconsidered becomes final. See United States v. Ibarra, 502 U.S. 1, 4 n.2 (1991) (holding would-be appellant who files timely motion for reconsideration from criminal judgment entitled to full time period for noticing appeal after motion for reconsideration has been decided); United States v. Dieter, 429 U.S. 6, 7-8 (1976) (same); see also United States v. Christy, 3 F.3d 765, 767 n.1 (4th Cir. 1993) (same).

McKelver submitted his Rule 60(b) motion well beyond the applicable period of time provided to notice an appeal of the judgment he sought the district court to reconsider. Accordingly, because McKelver's Rule 60(b) motion was untimely, we affirm the

district court's order denying the motion. See United States v. McKelver, No. 5:03-cr-00262-PMD (D.S.C. Oct. 11, 2006). 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.

AFFIRMED