

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-8071

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TIMOTHY EARL DAVIS, a/k/a Black,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Malcolm J. Howard, Senior District Judge. (4:99-cr-00027-H)

Submitted: November 15, 2007

Decided: November 20, 2007

Before WILLIAMS, Chief Judge, and MOTZ and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Walter A. Schmidlin III, ANDERSON, JONES & GENGO, PLLC, Raleigh, North Carolina, for Appellant. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Timothy Earl Davis seeks to appeal his sentence. 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). 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 an amended judgment on December 6, 2004. The notice of appeal was filed on September 15, 2005.* Because Davis failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the appeal. We also deny Davis' motion to strike counsel's appellate brief. 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

*Davis was accorded the benefit of Houston v. Lack, 487 U.S. 266 (1988), as September 15, 2005 was the date he certified he gave his notice of appeal to prison officials for mailing.