

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4036

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LINDELL ROY HUTCHINSON, a/k/a Star, a/k/a
Starsky,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Henry Coke Morgan, Jr., Senior District Judge. (4:03-cr-00015-HCM)

Submitted: September 7, 2007 Decided: September 19, 2007

Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jennifer T. Stanton, J.T. STANTON, P.C., Norfolk, Virginia, for Appellant. Chuck Rosenberg, United States Attorney, Richard Cooke, Howard J. Zlotnick, Assistant United States Attorneys, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lindell Roy Hutchinson seeks to appeal his 168-month sentence following his guilty plea to conspiracy to distribute and to possess cocaine with the intent to distribute. The government has moved to dismiss the appeal. 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 judgment on June 21, 2005. The notice of appeal was filed on December 21, 2005.* Because Hutchinson failed to file a timely notice of appeal or to obtain an extension of the appeal period, we grant the government's motion to dismiss and dismiss the appeal. United States v. Robinson, 361 U.S. 220, 224 (1960) (holding that timely filing of notice of appeal is "mandatory and jurisdictional"). We dispense with oral argument because the facts and legal contentions are adequately

*For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED