

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4240

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HERBERT LEWIS TURNER,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. Samuel G. Wilson, District Judge. (5:01-cr-30062-sgw)

Submitted: March 18, 2009

Decided: April 15, 2009

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

Dismissed by unpublished per curiam opinion.

Craig W. Sampson, BARNES & DIEHL, PC, Chesterfield, Virginia, for Appellant. Nancy Spodick Healey, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Herbert Lewis Turner seeks to appeal the district court's order revoking his supervised release and sentencing him to eighteen months' imprisonment, followed by an additional eighteen-month term of supervised release. The district court entered judgment on January 18, 2007. Turner filed a notice of appeal on February 20, 2007.¹ Because Turner failed to file a timely notice of appeal,² we remanded the case to the district court for the limited purpose of determining whether Turner had shown excusable neglect or good cause to warrant an extension of time to file a notice of appeal.

Despite an order from the district court directing Turner to submit a response explaining the reason he failed to file a timely notice of appeal, Turner filed no explanation. The court accordingly found that Turner failed to demonstrate excusable neglect or good cause. See United States v. Turner,

¹ The envelope in which the notice was mailed was postmarked February 20, 2007. Under the "mailbox rule" of Houston v. Lack, 487 U.S. 266 (1988), a document is deemed filed by a prisoner when it is delivered to prison officials for mailing.

² 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).

No. 5:01-cr-30062-sgw (W.D. Va. Jan. 13, 2009). The matter is now before this court for final disposition. In light of Turner's failure to file a timely notice of appeal and the district court's reasonable determination that Turner failed to demonstrate excusable neglect or good cause for his late appeal, we dismiss the appeal as untimely.

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