

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6569

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLINTON DESHANNON MYERS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Senior District Judge. (7:05-cr-00096-jct)

Submitted: February 21, 2008

Decided: April 17, 2008

Before MICHAEL and KING, Circuit Judges, and WILKINS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Clinton Deshannon Myers, Appellant Pro Se. Ronald Andrew Bassford, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clinton Deshannon Myers seeks to appeal the district court's order denying his motions to reopen the time to file a notice of appeal from his criminal judgment and for production of transcripts. We remanded the case to the district court for the limited purpose of determining whether Myers 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 Myers to submit an affidavit explaining the reason he failed to file a notice of appeal within ten days of the motion he sought to appeal, Myers filed no explanation. The court found that he failed to demonstrate excusable neglect or good cause. See United States v. Myers, No. 7:05-cr-00096-jct (W.D. Va. Mar. 9, 2007). We therefore dismiss the appeal as untimely.

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 March 9, 2007. The notice of appeal was filed on April 11, 2007.* Because Myers failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the appeal. 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

*Myers did not date his notice of appeal, but it was postmarked April 11, 2007. For purposes of this appeal, we assume that the postmark date is the earliest date it could have been properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988).