

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-6720**

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DOUGLAS HAYTH BREWBAKER,  
  
Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,  
  
Respondent - Appellee.

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Appeal from the United States District Court for the Northern  
District of West Virginia, at Elkins. Robert E. Maxwell, Senior  
District Judge. (2:06-cv-00016-REM-JSK)

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Submitted: December 11, 2008                      Decided: December 17, 2008

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Before NIEMEYER, DUNCAN, and AGEE, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Douglas Hayth Brewbaker, Appellant Pro Se.      Alan Gordon  
McGonigal, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West  
Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Douglas Hayth Brewbaker seeks to appeal the district court's order adopting the magistrate judge's report and recommendation and dismissing his claim that restitution should be deferred until he is on supervised release. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on September 21, 2006. The notice of appeal appears to have been postmarked April 25, 2008, and was filed on May 1, 2008.\* Because Brewbaker failed to file a timely notice of appeal or to

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\*For the purpose of this appeal, we assume that the date appearing on the postmark 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).

obtain an extension or reopening 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