

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8041

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEMONZE E. FORD,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Henry F. Floyd, District Judge. (7:03-cr-01094-HFF-14; 7:06-cv-02148-HFF)

Submitted: September 11, 2009

Decided: October 9, 2009

Before WILKINSON, NIEMEYER, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Lemonze E. Ford, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lemonze E. Ford seeks to appeal the district court's order denying his 28 U.S.C.A. § 2255 (West Supp. 2009) motion. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In a civil case, 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). The requirement of a timely notice of appeal is mandatory and jurisdictional. See Bowles v. Russell, 551 U.S. 205, 214 (2007); United States v. Urutyan, 564 F.3d 679, 685 (4th Cir. 2009) (discussing Bowles and the appeal periods under Fed. R. App. P. 4(a)).

The district court's order was filed and entered on its docket on July 10, 2008. The district court received Ford's undated notice of appeal on September 22, 2008, after the expiration of the sixty-day appeal period, but within the excusable neglect period. Because Ford moved for an extension of time pursuant to Rule 4(a)(5), we remanded this case to the district court to determine whether Ford could demonstrate excusable neglect or good cause warranting an extension of the

appeal period. On remand, the district court found that Ford had not established excusable neglect or good cause. We have reviewed the record and conclude that the district court did not abuse its discretion in making this determination.

Because the district court declined to extend the appeal period based on excusable neglect or good cause, we dismiss the appeal for lack of jurisdiction. 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