

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8486

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER LINEBERRY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. James P. Jones, Chief District Judge. (1:02-cr-00044-jpj-mfu-1; 1:08-cv-80045-jpj-mfu)

Submitted: April 23, 2009

Decided: May 4, 2009

Before MICHAEL, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Christopher Lineberry, Appellant Pro Se. Steven Randall Ramseyer, Assistant United States Attorney, Abingdon, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Christopher Lineberry seeks to appeal the district court's order dismissing his 28 U.S.C.A. § 2255 (West Supp. 2008) motion as untimely. 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)). Accord Bowles v. Russell, 551 U.S. 205 (2007).

The district court's order was entered on the docket on May 16, 2008. The notice of appeal was filed on November 21, 2008.* Because Lineberry failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument

* 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).

because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED