

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7434

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THEODORE GLENN BROOKS,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:00-cr-00293-TDS-6; 1:08-cv-00211-TDS-PTS; 1:08-cv-00277-TDS-PTS)

Submitted: March 22, 2010

Decided: April 16, 2010

Before MOTZ, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Theodore Glenn Brooks, Appellant Pro Se. Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Theodore Glenn Brooks seeks to appeal the district court's order denying as time-barred his motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. 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 February 3, 2009. Giving Brooks the benefit of Fed. R. App. P. 4(c) and 4(d), his notice of appeal was filed at the earliest on May 26, 2009, the date he signed it. This is well past the sixty-day appeal period. Accordingly, because Brooks failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We deny Brooks's motion for a certificate of appealability. 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