

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-6173**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHNNY LEE GORE, a/k/a Manager,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Florence. C. Weston Houck, Senior District Judge. (4:01-cr-00627-CWH-9)

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Submitted: May 20, 2010

Decided: May 27, 2010

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Before WILKINSON, NIEMEYER, and DAVIS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Johnny Lee Gore, Appellant Pro Se. Marvin Jennings Caughman, Assistant United States Attorney, Columbia, South Carolina, Rose Mary Sheppard Parham, Assistant United States Attorney, Florence, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Johnny Lee Gore appeals the district court's order denying his motion for a new trial filed under Rule 33 of the Federal Rules of Criminal Procedure, because the motion was untimely. We agree. Under Rule 33(b)(1), Gore had "3 years after the verdict or finding of guilty" to file his motion claiming he had newly discovered evidence. See Fed. R. Crim. P. 33(b)(1). The jury found Gore guilty on June 5, 2002. Because Gore did not file his Rule 33 motion until September 23, 2009, the motion was not timely. Accordingly, we affirm the district court's denial of relief. 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.

AFFIRMED