

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 11-6173**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HAROLD B. PHILLIPS,

Defendant - Appellant.

---

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Mark S. Davis, District Judge. (2:07-cr-00073-WDK-JEB-1; 2:09-cv-00098-MSD)

---

Submitted: June 30, 2011

Decided: July 6, 2011

---

Before WILKINSON, DUNCAN, and WYNN, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Harold B. Phillips, Appellant Pro Se. James Ashford Metcalfe, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Harold B. Phillips seeks to appeal the district court's order denying his motion for habeas relief filed pursuant to 28 U.S.C.A. § 2255 (West 2010). 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). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on May 13, 2010. The notice of appeal was filed on January 28, 2011.\* Because Phillips 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 because the

---

\*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).

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

DISMISSED