

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6389

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TRADON MARQUEZ DRAYTON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. James P. Jones, District Judge. (1:04-cr-00009-JPJ-RSB-1; 1:12-cv-80499-JPJ-RSB)

Submitted: June 20, 2013

Decided: June 26, 2013

Before GREGORY, DUNCAN, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tradon Marquez Drayton, Appellant Pro Se. Anthony Paul Giorno, Assistant United States Attorney, Ashley Brooke Neese, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tradon Marquez Drayton seeks to appeal the district court's order construing his petition for a writ of audita querela as a successive 28 U.S.C.A. § 2255 (West Supp. 2013) motion, and dismissing it for lack of jurisdiction. 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 August 20, 2012. The notice of appeal was filed on February 28, 2013.* Because Drayton failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal

*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).

period, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED