

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 00-6127**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID FITZGERALD LIGHTNER,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert D. Potter, Senior District Judge. (CR-93-133-P)

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Submitted: May 25, 2000

Decided: June 5, 2000

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Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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David Fitzgerald Lightner, Appellant Pro Se. Gretchen C. F. Shappert, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Following a jury trial, David Fitzgerald Lightner was convicted of possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1) (1994), and a related conspiracy charge in violation of 21 U.S.C. § 846 (1994). On May 16, 1994, the district court sentenced him to two concurrent life sentences. This court affirmed the district court's judgment. See United States v. Lightner, No. 94-5540 (4th Cir. June 5, 1996) (unpublished). Lightner now attempts to file a second direct criminal appeal pursuant to 18 U.S.C. § 3742 (1994). We lack jurisdiction to consider the merits of the appeal, however, because it is untimely. Criminal defendants have ten days from the entry of the judgment or order at issue to file a notice of appeal. See Fed. R. App. P. 4(b). The appeal periods established by Rule 4 are mandatory and jurisdictional. See Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978). Lightner filed his notice of appeal in January 2000, more than five years outside the appeal period. Lightner's untimely appeal deprives this court of jurisdiction to consider its merits. We therefore dismiss the appeal. 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