

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 00-6885**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JERMAINE JERRELL SIMS, a/k/a Justice, a/k/a  
Jus,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (CR-98-45)

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Submitted: August 30, 2000

Decided: September 18, 2000

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Before WIDENER, NIEMEYER, and WILLIAMS, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Jermaine Jerrell Sims, Appellant Pro Se. Kenneth E. Melson, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia; Nicholas Stephan Altimari, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jermaine Jerrell Sims appeals the district court's order denying his second motion for reconsideration of the district court's denial of his Fed. R. Crim. P. 33 motion for a new trial. Sims filed an untimely notice of appeal of the district court's order denying reconsideration. We dismiss for lack of jurisdiction.

The time periods for filing notices of appeal are governed by Fed. R. App. P. 4. These periods are "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). A defendant in a criminal case has ten days from the entry of a judgment to file a notice of appeal. See Fed. R. App. P. 4(b)(1). This appeal period may be tolled under the provisions of Fed. R. App. P. 4 (b)(3) or extended within the thirty days following the expiration of the ten-day appeal period. See Fed. R. App. P. 4(b)(4).

The district court entered its denial of Sims' motion on May 25, 2000; Sims' notice of appeal was filed on June 15, 2000, the date which he alleged he gave the notice of appeal to prison officials.\* Sims' failure to note a timely appeal or obtain an extension of the appeal period leaves this court without jurisdiction to consider the merits of his appeal. We therefore dismiss this

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\* See Houston v. Lack, 487 U.S. 266 (1988).

appeal. We also deny Sims' motion for the production of his trial transcript at government expense. 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