

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-6512

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROBERT LEON BUCKNER,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Chief District Judge. (CR-97-413-JFM)

Submitted: May 10, 2001

Decided: May 23, 2001

Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Robert Leon Buckner, Appellant Pro Se. Andrew George Warrens Norman, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Robert Leon Buckner seeks to appeal the district court's orders (1) finding that he failed to establish excusable neglect under Fed. R. App. P. 4(b)(4), warranting an extension of the appeal period, and (2) denying relief on his motion filed under Fed. R. Crim. P. 35. We have reviewed the record and the district court's opinion finding no excusable neglect and conclude that the district court did not abuse its discretion. United States v. Breit, 754 F.2d 526, 529 (4th Cir. 1985) (stating standard of review). Accordingly, we affirm on the reasoning of the district court. United States v. Buckner, No. CR-97-413-JFM (D. Md. Mar. 20, 2001).

Buckner also challenges the denial of his Rule 35 motion. We dismiss this portion of the appeal for lack of jurisdiction. Fed. R. App. P. 4(b)(1); Breit, 754 F.2d at 528 (applying ten-day appeal period to Rule 35 motion).

The district court's order denying Rule 35 relief was entered on the docket on February 20, 2001; the ten-day appeal period expired on March 2, 2001. Under Houston v. Lack, 487 U.S. 266 (1988), Buckner filed his notice of appeal on March 9, 2001. Because Buckner failed to file a timely notice of appeal or to obtain an extension based upon excusable neglect, we dismiss this portion of the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequate-

ly presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART AND DISMISSED IN PART