

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7355

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BILLY JEROME PEE,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Cameron McGowan Currie, District Judge. (CR-96-398, CA-98-719-4)

Submitted: December 12, 2001

Decided: January 9, 2002

Before NIEMEYER, TRAXLER, and GREGORY, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Billy Jerome Pee, Appellant Pro Se. Alfred William Walker Bethea, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Billy Jerome Pee appeals the district court's order denying his motion to compel the Government to file a Fed. R. Crim. P. 35(b) motion and subsequent motion to reconsider. We dismiss in part and affirm in part.

Pee's motion pursuant to Rule 35(b) was denied by the district court on June 5, 2001. Pee failed to file a notice of appeal from this order within the ten day period provided by Fed. R. App. P. 4(b). See United States v. Breit, 754 F.2d 526, 528-29 (4th Cir. 1985). We therefore dismiss Pee's appeal as it relates to the June 5 order for lack of jurisdiction.

With respect to Pee's motion to reconsider, we have reviewed the record and the district court's opinion and find that the district court lacked jurisdiction to entertain the motion. See id.; cf. Nilson Van & Storage v. Marsh, 755 F.2d 362, 364 (4th Cir. 1985) (holding a district court has jurisdiction to entertain motion for reconsideration filed in a criminal case from an order denying relief when the motion is filed before the order sought to be reconsidered becomes final). On that basis, we affirm the denial of relief on Pee's motion for reconsideration.

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 IN PART, AFFIRMED IN PART