

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-7446**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ELENA VON BRESSENSDORF, a/k/a Elena Bisheff,  
a/k/a Baroness,

Defendant - Appellant.

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**No. 01-7576**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

OTTO VON BRESSENSDORF,

Defendant - Appellant.

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No. 01-7577

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ELENA VON BRESSENSDORF, a/k/a Elena Bisheff,  
a/k/a Baroness,

Defendant - Appellant.

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Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CR-98-14)

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Submitted: November 6, 2001

Decided: November 29, 2001

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Before NIEMEYER and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Elena Von Bressensdorf, Otto Von Bressensdorf, Appellants Pro Se. James Brien Comey, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia; Dana Johannes Finberg, MCCANDLISH, KAIN, P.C., Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In these consolidated appeals, the Von Bressensdorfs challenge the district court's order granting the Trustee/Special Master's amended motion for approval of restitution payments and of fees and costs. The order was entered on July 27, 2001. By notice of appeal dated August 19, 2001, Elena Von Bressendorf appealed this order. Because No. 01-7446 is untimely, we dismiss. We further grant the Government's motion to dismiss Nos. 01-7576/7577. We deny the Appellants' motions to stay the court's July 27, 2001, order.

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. Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978).

The district court's order in No. 01-7446 was entered on the docket on July 27, 2001. Elena Von Bressendorf's notice of appeal was filed on August 19, 2001.<sup>1</sup> Because Von Bressendorf failed to

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<sup>1</sup> Under Houston v. Lack, 487 U.S. 266 (1988), the notice of appeal is considered filed as of the date Appellant delivered it to prison officials for forwarding to the court. We presume for the sake of this appeal, that the date on the notice of appeal is the date the notice was given to prison officials for mailing.

file a timely notice of appeal or obtain an extension or reopening of the appeal period, we dismiss No. 01-7446.<sup>2</sup>

Accordingly, we dismiss No. 01-7446 for lack of jurisdiction. We grant the Government's motion to dismiss insofar as it relates to Nos. 01-7576 and 01-7577. We deny the Appellants' motions for a stay. We also deny Elena Von Bressendorf's motions for in forma pauperis status filed in Nos. 01-7446 and 01-7577 and Otto Von Bressendorf's motion for judicial notice filed in No. 01-7576. 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

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<sup>2</sup> If the appeal was timely, we would dismiss on the Government's motion to dismiss the appeal because the appeal is clearly frivolous. Elena Von Bressendorf challenges an order granting the Trustee/Special Master's amended motion for approval of restitution payments and of fees and costs. She argues that the order is premature because she will challenge her conviction in a 28 U.S.C.A. § 2255 (West Supp. 2001). She has yet to file such a motion. Because restitution was affirmed on direct appeal, we find the instant appeal is frivolous.