

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. MARION THOMAS, <i>Defendant-Appellant.</i>
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No. 02-4378

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Richard L. Voorhees, District Judge.
(CR-90-215-V)

Submitted: October 10, 2002

Decided: October 18, 2002

Before WILLIAMS, KING, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Aaron E. Michel, Charlotte, North Carolina, for Appellant. Robert J. Conrad, Jr., United States Attorney, Thomas R. Ascik, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Marion Thomas appeals the district court's revocation of his supervised release and resulting twenty-four month sentence. On appeal, Thomas identifies no error in the revocation proceeding, but instead challenges the legality of his original conviction and sentence. Finding no error, we affirm.

Parties in criminal cases are accorded ten days after the entry of the district court's final judgment or order to note an appeal. *See* Fed. R. App. P. 4(b). This appeal period is "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)). Because Thomas did not appeal his original conviction and sentence, this court does not have jurisdiction to review it more than ten years after its imposition. However, because Thomas filed a timely notice of appeal as to his revocation proceeding, we have jurisdiction to review that proceeding.

Nonetheless, because Thomas's sole argument on appeal is not subject to our consideration, we must reject it. Moreover, even if we were to assume the existence of jurisdiction, we would find it foreclosed by our decision in *United States v. Pratt*, 239 F.3d 640, 647 (4th Cir. 2001).

Accordingly, we affirm Thomas's conviction and sentence imposed pursuant to his revocation proceeding. We deny his motion to strike the Government's brief in part. 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.

AFFIRMED