

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 02-7667**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID SWIFT,

Defendant - Appellant.

---

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Richard C. Erwin, Senior District Judge. (CR-89-235-G)

---

Submitted: January 16, 2003

Decided: January 27, 2003

---

Before WILLIAMS, KING, and GREGORY, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

David Swift, Appellant Pro Se. Anna Mills Wagoner, United States Attorney, Greensboro, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Swift seeks to appeal his conviction for possession with intent to distribute cocaine base. We dismiss the appeal for lack of jurisdiction, because the notice of appeal was not timely filed. In criminal cases, the defendant must file his notice of appeal within ten days of entry of judgment. Fed. R. App. P. 4(b)(1)(A). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). Swift's criminal judgment was entered on the docket on September 20, 1990. The notice of appeal was filed on October 20, 2002.\* Because Swift failed to file a timely notice of appeal, we dismiss the appeal. 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

---

\* For purposes of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).