

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4603

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES TYRONE BELLAMY,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. C. Weston Houck, Senior District Judge. (CR-01-293)

Submitted: February 25, 2004

Decided: March 12, 2004

Before NIEMEYER, MICHAEL, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

William F. Nettles, IV, Assistant Federal Public Defender, Florence, South Carolina, for Appellant. Rose Mary Parham, 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Unpublished opinions are not binding precedent in this circuit.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:

James Tyrone Bellamy seeks to appeal his conviction and sentence following his guilty plea to conspiring to possess with the intent to distribute crack and to being a felon in possession of a firearm. See 21 U.S.C. § 846 (2000); 18 U.S.C. §§ 922(g), 924(a) (2000). The district court entered judgment of conviction against Bellamy on February 20, 2002. Bellamy filed a pro se notice of appeal on July 15, 2003. Counsel has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), conceding the appeal is untimely. Bellamy has filed a supplemental brief, alleging his counsel was ineffective for failing to file a timely appeal.

Under the Federal Rules of Appellate Procedure, a defendant's notice of appeal in a criminal case must be filed within ten days after the entry of the judgment. Fed. R. App. P. 4(b)(1). The district court may, upon a finding of excusable neglect or good cause, extend a defendant's time period for filing a notice of appeal an additional thirty days beyond the expiration of the ten-day period. Fed. R. App. P. 4(b)(4). The appeal periods established by Rule 4 are mandatory and jurisdictional. Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978); Panhorst v. United States, 241 F.3d 369-70 (4th Cir. 2001). We are precluded from enlarging the time for filing a notice of appeal. See Fed. R. App. P. 26(b).

Bellamy's notice of appeal was filed beyond both the ten-day period and the additional thirty-day period. Because Bellamy's appeal is clearly untimely, we lack jurisdiction and dismiss the appeal. Bellamy's contention that his counsel was ineffective for failing to file a timely appeal is appropriately raised in a motion filed pursuant to 28 U.S.C. § 2255 (2000).

In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

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