

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7233

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WAYNE MARK BROWN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Dennis W. Shedd and Patrick Michael Duffy, District Judges. (CR-98-1126, CA-02-1434-0-23)

Submitted: November 6, 2003

Decided: November 20, 2003

Before WIDENER, MICHAEL, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Wayne Mark Brown, Appellant Pro Se. Marshall Prince, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Wayne Mark Brown seeks to appeal the district court's order denying his § 2255 motion. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). 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)).

The district court's order was entered on the docket on April 30, 2003. The notice of appeal was filed on July 21, 2003.* Because Brown failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We deny Brown's motion for appointment of counsel. We dispense with oral argument because the facts and legal contentions are

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

adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED