

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6047

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SAVINO BRAXTON,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, District Judge. (CR-90-135-K)

Submitted: July 29, 2004

Decided: August 4, 2004

Before LUTTIG, MICHAEL, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Savino Braxton, Appellant Pro Se. Andrea L. Smith, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Savino Braxton seeks to appeal the district court's denial of his supplemental motion for a reduction of his sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Movants are accorded ten days after the entry of the district court's final judgment or order to note an appeal in criminal cases. Fed. R. App. P. 4(b)(1); United States v. Breit, 754 F.2d 526, 528 (4th Cir. 1985) (applying ten-day appeal period to Rule 35 motion). The district court's order was entered on the docket on November 10, 2003. Under Houston v. Lack, 487 U.S. 266 (1988), the earliest date we may consider Braxton filed his notice of appeal is December 14, 2003. Because the notice of appeal was filed within the excusable neglect period provided in Fed. R. App. P. 4(b)(4), the district court ordered Braxton to show why his late filing should be excused. After reviewing Braxton's response, the district court concluded that Braxton failed to demonstrate excusable neglect or good cause and we find no abuse of that discretion. Breit, 754 F.2d at 528 (providing standard of review).

Because Braxton failed to timely file an appeal or obtain an extension of the appeal period, we dismiss the appeal for lack of jurisdiction. 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