

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6859

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM PATRICK MILLER,

Defendant - Appellant.

No. 04-7266

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM PATRICK MILLER,

Defendant - Appellant.

Appeals from the United States District Court for the Western
District of North Carolina, at Charlotte. Lyle E. Strom, Senior
District Judge. (CR-98-7-MU; CA-01-598-MU)

Submitted: January 10, 2005

Decided: March 3, 2005

Before WILKINSON, WILLIAMS, and MOTZ, Circuit Judges.

No. 04-6859 affirmed; No. 04-7266 dismissed by unpublished per curiam opinion.

William Patrick Miller, Appellant Pro Se. Jennifer Marie Hoefling, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

William Patrick Miller seeks to appeal the district court's orders (1) denying his motion filed under Fed. R. Crim. P. 33 (No. 04-7266), and (2) denying his motions to amend and for reconsideration (No. 04-6859). We dismiss the appeal in No. 04-7266 and affirm in No. 04-6859.

In criminal cases, the defendant must file his notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A); see Awon v. United States, 308 F.3d 133, 139 (1st Cir. 2002) (applying Rule 4(b) to Rule 33 motion for new trial). With or without a motion, the district court may grant an extension of time of up to thirty days upon a showing of excusable neglect or good cause. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985). This appeal period is mandatory and jurisdictional. Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978).

The district court entered its order denying Miller's Rule 33 motion on December 10, 2003; the ten-day appeal period expired on December 24, 2003. See Fed. R. App. P. 26(a)(2). Miller filed his notice of appeal after both the ten-day period and the thirty-day excusable neglect period expired. The notice of appeal is therefore untimely. Miller, however, argues on appeal that because he did not receive a copy of the court's order denying his Rule 33 motion, the appeal period should be extended and his

notice of appeal deemed timely filed. Miller's argument is foreclosed by our decision in United States v. Little, 392 F.3d 671, 682 (4th Cir. 2004) (concluding that time to appeal under Rule 4(b) may not be extended in criminal case even though party seeking to appeal did not receive proper notice of district court's order). Accordingly, we dismiss the appeal in No. 04-7266 for lack of jurisdiction.

Turning to the appeal in No. 04-6859, we have reviewed the record and find no reversible error. Accordingly, we affirm the orders denying Miller's motions to amend and for reconsideration for the reasons stated by the district court. United States v. Miller, Nos. CR-98-7-MU; CA-01-598-MU (W.D.N.C. Apr. 6, 2004; Apr. 22, 2004).

We deny Miller's motion to file a supplemental brief and 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.

No. 04-6859 AFFIRMED
No. 04-7266 DISMISSED