

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7173

LINO H. HAYNES, a/k/a Loni Haynes, a/k/a Nino,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (CR-90-105-N)

Submitted: November 17, 2004

Decided: December 1, 2004

Before MOTZ and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Lino H. Haynes, Appellant Pro Se. Laura Marie Everhart, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Lino H. Haynes seeks to appeal the district court's order denying in part and granting in part his Fed. R. Crim. P. 35 motion. In criminal cases, the defendant must file his notice of appeal within ten business days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A) and 26(a)(2); see United States v. Breit, 754 F.2d 526, 528-29 (4th Cir. 1985) (holding that ten-day appeal period applies to appeals from Rule 35 ruling). 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).

The district court entered its order on May 11, 2004; the ten-day appeal period expired on May 25. See Fed. R. App. P. 26(a)(2). Haynes filed his notice of appeal after both the ten-day period and the thirty-day excusable-neglect period had expired. The notice of appeal is thus untimely, and the appeal must be dismissed. Therefore, we grant Haynes' motion to amend his brief, deny his motion to proceed in forma pauperis, and 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