

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-4969

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM TERRENCE CROSS, a/k/a Red,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (CR-03-10)

Submitted: December 22, 2005

Decided: December 29, 2005

Before WIDENER, NIEMEYER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

William Terrence Cross, Appellant Pro Se. Joseph Ryland Winston, Glen Allen, Virginia, for Appellant. Michael James Elston, Assistant United States Attorney, Alexandria, Virginia, Laura P. Tayman, Assistant United States Attorney, Norfolk, Virginia, Michele Yvette Francis Sarko, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

By judgment entered on August 1, 2003, William T. Cross was convicted by a jury of witness tampering, 18 U.S.C. § 1512(b)(1) (2000), and retaliating against a witness, 18 U.S.C. § 1513(b)(2) (2000). On appeal, this Court affirmed his convictions, but vacated his sentence and remanded for resentencing. United States v. Cross, 371 F.3d 176 (2004). This Court recently affirmed the sentence imposed at resentencing. United States v. Cross, No. 04-5030, 2005 WL 3452041 (4th Cir. Dec. 16, 2005) (unpublished).

Seeking a second direct criminal appeal of his convictions, Cross filed a notice of appeal at the earliest on September 13, 2005, of the district court's pre-trial April 15, 2003, order denying his motion to dismiss for lack of jurisdiction. We lack jurisdiction to consider the merits of the appeal because it is untimely. Criminal defendants have ten days from the entry of the judgment or order at issue to file a notice of appeal. See Fed. R. App. P. 4(b). The appeal periods established by Rule 4 are mandatory and jurisdictional. Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978). Because Cross filed his notice of appeal over two years after his criminal judgment was entered, we lack jurisdiction to consider the merits of the appeal.

Accordingly, we dismiss this appeal. 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