

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6277

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CURTIS LEE TERRY,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (CR-00-162; CA-04-219)

Submitted: May 19, 2005

Decided: May 26, 2005

Before LUTTIG, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Curtis Lee Terry, Appellant Pro Se. Jennifer P. May-Parker, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Curtis Lee Terry seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000). 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. Dir., Dep't of Corr., 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 July 28, 2004. The notice of appeal was filed on February 3, 2005.* Because Terry failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny his motion for appointment of counsel and dismiss the appeal. We dispense with oral argument because the facts and legal contentions

*Although the notice of appeal was dated September 9, 2004, Terry failed to include the declaration required by Fed. R. App. P. 4(c). Thus, the district court relied on the date written on the envelope as proof of when the notice of appeal was deposited for mailing. Terry did not challenge this finding in his informal brief.

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

DISMISSED