

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6727

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GALEN CLIFTON SHAWVER,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, District Judge. (CR-00-262; CA-04-36-1)

Submitted: September 27, 2005 Decided: September 30, 2005

Before LUTTIG, MOTZ, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Galen Clifton Shawver, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Galen Clifton Shawver seeks to appeal the district court's order denying his 28 U.S.C. § 2255 (2000) motion. 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. Director, Dep't of Corrections, 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 February 22, 2005. The notice of appeal was filed on May 8, 2005.* Because Shawver failed to file a timely notice of appeal or obtain an extension or reopening of the appeal period, we deny his motion to proceed in forma pauperis and dismiss the appeal.

*We have given Shawver the benefit of Houston v. Lack, 487 U.S. 266 (1988), in determining the date in which he filed materials in the district court.

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