

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-7302**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES LARRY JOHNSON,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Senior District Judge. (3:95-cr-00020-2; 3:98-cv-00438)

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Submitted: November 21, 2006

Decided: December 1, 2006

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Before TRAXLER and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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James Larry Johnson, Appellant Pro Se. Amy Elizabeth Ray, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Larry Johnson seeks to appeal the district court's order denying relief on 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. 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 November 7, 2001. The notice of appeal was filed on July 12, 2006.\* Because Johnson failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny his motion for a certificate of appealability as moot and dismiss the appeal. We dispense with oral argument because the facts and

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\*For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

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

DISMISSED