

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6274

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC L. JACKSON, a/k/a Tango,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Senior District Judge. (5:01-cr-00004-FPS-JES-1; 5:04-cv-00113-FPS-JES)

Submitted: June 26, 2008

Decided: August 11, 2008

Before MICHAEL and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Eric L. Jackson, Appellant Pro Se. Robert Hugh McWilliams, Jr., Assistant United States Attorney, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric L. Jackson seeks to appeal the district court's orders (1) denying his motion for a certificate of appealability, and (2) accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2255 (2000) motion. With regard to the court's order denying his motion for a certificate of appealability, 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 13, 2007. The notice of appeal was filed, at the earliest, on February 1, 2008. Because Jackson failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss this portion of the appeal for lack of jurisdiction.

Turning to the district court's order denying relief on Jackson's § 2255 motion,* the order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001).

We have independently reviewed the record and conclude that Jackson has not made the requisite showing with regard to his claim that counsel failed to obtain an independent test to determine the type of drugs involved in the offenses. We also note that Jackson failed to object to the magistrate judge's recommendations with regard to his remaining ineffective assistance of counsel claims after receiving proper notice and, therefore, has waived appellate review of those issues. See Wright v. Collins,

*We conclude that we have jurisdiction to review this order because the application for a certificate of appealability filed in the district court was filed within the applicable appeal period and may be construed as a notice of appeal.

766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Accordingly, we deny Jackson's motion for a certificate of appealability and dismiss the appeal of the order denying § 2255 relief.

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