

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8359

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAMIAN G. BEY, a/k/a Damien Giovanni Bey,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (5:03-cr-00252-BR-1)

Submitted: March 17, 2009

Decided: March 23, 2009

Before TRAXLER, KING, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Damian G. Bey, Appellant Pro Se. Mary Jude Darrow, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Damian G. Bey seeks to appeal the denial of his motions to compel the Government to file a Fed. R. Crim. P. 35 motion and to withdraw his guilty plea. In criminal cases, the defendant must file the notice of appeal within ten days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to thirty days to file a notice of appeal. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered judgment on March 24, 2008 and reaffirmed its previous denial on July 14, 2008. The notice of appeal was filed on October 22, 2008.* Because Bey failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the 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

* 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, 276 (1988).