

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6280

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM TERRENCE CROSS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (2:03-cr-00010-RBS-1)

Submitted: July 30, 2009

Decided: August 4, 2009

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

William Terrence Cross, Appellant Pro Se. Laura Pellatiro Tayman, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

By judgment entered on August 1, 2003, William T. Cross was convicted by a jury of witness tampering, 18 U.S.C. § 1512(b)(1) (2006), and retaliating against a witness, 18 U.S.C. § 1513(b)(2) (2006). On appeal, this court affirmed his convictions, but vacated his sentence and remanded for resentencing. United States v. Cross, 371 F.3d 176 (4th Cir. 2004). This court affirmed the sentence imposed at resentencing. United States v. Cross, No. 04-5030, 2005 WL 3452041 (4th Cir. Dec. 16, 2005) (unpublished).

Seeking a second direct criminal appeal of his convictions, Cross filed a notice of appeal at the earliest on January 22, 2009, of the district court's pre-trial April 15, 2003, order denying his motion to dismiss for lack of jurisdiction. The Government has moved to dismiss the appeal because it is untimely. Criminal defendants have ten days from the entry of the judgment or order at issue to file a notice of appeal. See Fed. R. App. P. 4(b).

While Cross's appeal is clearly untimely, appeal periods in criminal cases are not jurisdictional; rather, they are "claim-processing rules" adopted by the Supreme Court that do not affect this court's subject-matter jurisdiction. See Bowles v. Russell, 551 U.S. 205, 208-13 (2007); United States v. Frias, 521 F.3d 229, 233 (2d Cir. 2008); United States v.

Mitchell, 518 F.3d 740, 744 (10th Cir. 2008). Despite the fact that the time limitations imposed by Rule 4(b) are not jurisdictional, they “must be enforced by th[e] court when properly invoked by the government.” Mitchell, 518 F.3d at 744.

Accordingly, we grant the Government’s motion to dismiss the appeal as untimely filed. We deny Cross’s motions for appointment of counsel and to dismiss for lack of subject matter jurisdiction. 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