

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-4510**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTHONY MCCLAIN, a/k/a Ice, a/k/a New York,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Charles E. Simons, Jr., Senior District Judge. (CR-96-179)

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Submitted: August 18, 1998

Decided: September 8, 1998

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Before WILKINS, NIEMEYER, and LUTTIG, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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William Elvin Hopkins, Jr., MCCUTCHEN, BLANTON, RHODES & JOHNSON, L.L.P., Columbia, South Carolina, for Appellant. J. Rene Josey, United States Attorney, Scarlett A. Wilson, Assistant United States Attorney, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Anthony McClain was convicted pursuant to his guilty pleas of carjacking, armed robbery, carrying a firearm in connection with a crime of violence, and possession of a firearm by a convicted felon. On appeal, he alleges that he should have been tried in state, rather than federal, court, that the district court improperly applied the Sentencing Guidelines\* in calculating his sentence, and that trial counsel rendered ineffective assistance. Because we find that McClain failed to file a timely notice of appeal, we dismiss for lack of jurisdiction.

The time periods for filing notices of appeal are governed by Fed. R. App. P. 4. These periods are "mandatory and jurisdictional." United States v. Raynor, 939 F.2d 191, 197 (4th Cir. 1991). Criminal defendants must file their notices of appeal within ten days after the entry of judgment. Fed. R. App. P. 4(b). Although this time period may be extended in certain circumstances, none of these apply to McClain.

The district court filed its judgment and commitment order on November 19, 1996. McClain filed his notice of appeal on June 24, 1997, which is well beyond the ten-day appeal period. McClain's failure to note a timely appeal leaves this court without jurisdiction to consider the merits of his appeal. We therefore dismiss the appeal. We dispense with oral argument because the

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\* U.S. Sentencing Guidelines Manual (1995).

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

DISMISSED