

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-4779

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JERMAL DANIELS, a/k/a Tony,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., District Judge. (CR-89-186)

Submitted: January 15, 1998

Decided: January 27, 1998

Before MURNAGHAN and LUTTIG, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jermal Daniels, Appellant Pro Se. John Kirk Brandfass, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant filed an untimely notice of appeal. We dismiss the appeal 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."¹ In criminal cases, a defendant has ten days within which to file in the district court a notice of appeal after entry either of the judgment or order appealed from, or of a notice of appeal by the Government.² The only exceptions to the appeal period are when the defendant makes a timely motion as specified in FED. R. APP. P. 4(b), or the district court extends the time to appeal or reopens the appeal period for excusable neglect.

The district court entered its order on March 5, 1990; Appellant's notice of appeal was filed on Sept. 15, 1997. Appellant's failure to file a timely notice of appeal or to obtain either an extension or a reopening of the appeal period leaves this court without jurisdiction to consider the merits of Appellant's appeal. We therefore deny Appellant's motion to appoint counsel and 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

¹ See Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

² See Fed. R. App. P. 4(b).