

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 99-4022

ANTHONY ANTONIO SMITH, a/k/a

Anthony Antonio Alexis Smith,

a/k/a Tony Smith,

Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Greenville.

G. Ross Anderson, Jr., District Judge.

(CR-97-129, CA-98-2806-6-13)

Submitted: September 30, 1999

Decided: December 30, 1999

Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

Remanded and vacated by unpublished per curiam opinion.

COUNSEL

D. Garrison Hill, HILL, WYATT & BANNISTER, L.L.P., Green-
ville, South Carolina, for Appellant. J. Rene Josey, United States
Attorney, E. Jean Howard, Assistant United States Attorney, Green-
ville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Anthony Antonio Smith appeals his criminal judgment for conspiracy to possess crack cocaine with the intent to distribute, and distribution of the same in violation of 21 U.S.C. § 846 (1994). The original criminal judgment in this case was entered on September 29, 1997. On September 25, 1998, Smith filed a motion for habeas relief under 28 U.S.C.A. § 2255 (West Supp. 1999), alleging that his attorney did not file a requested notice of appeal. In response, the district court vacated its earlier judgment and entered a new judgment on November 2, 1998, from which Smith was allowed to appeal timely. The amended judgment, however, inaccurately advised Smith that he had sixty days, rather than ten days as prescribed by Fed. R. App. P. 4(b), to file an appeal.

Smith filed an appeal forty-four days after the entry of judgment. Thus, the appeal was untimely under Rule 4(b) but within the time period advised by the district court. We remand this case to the district court with instructions that it vacate its amended judgment and enter a new judgment that properly advises Smith that the appeal period from the new judgment will be ten days. 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.

REMANDED AND VACATED