

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-6781

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TERRY LAMAR BRICE,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Henry M. Herlong, Jr., District Judge. (CR-92-328)

Submitted: February 22, 2000

Decided: March 14, 2000

Before NIEMEYER and MICHAEL, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Terry Lamar Brice, Appellant Pro Se. David Calhoun Stephens, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Terry Lamar Brice seeks to appeal from an order of the district court refusing to construe his motion for certificate of appealability as a timely notice of appeal. Brice sought to appeal the denial of a motion to supplement a Fed. R. Crim. P. 33 motion for new trial, which the district court had already denied. Under Fed. R. App. P. 4(b), Brice had ten days from entry of that order on the criminal docket to note his appeal. His motion for certificate of appealability was filed fifty-one days later. Therefore, the motion could not be construed as a timely notice of appeal, and the district court did not err in denying Brice's request to so construe it. We deny a certificate of appealability 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