

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-6037

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHN WESLEY FAIRCLOTH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Malcolm J. Howard, District Judge. (CR-95-72-H, CA-98-229-H)

Submitted: June 15, 2000

Decided: August 1, 2000

Before NIEMEYER and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

John Wesley Faircloth, Appellant Pro Se. Robert Edward Skiver, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

John Wesley Faircloth seeks to appeal the district court's orders denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000) and his motion for reconsideration. Although the district court entered summary judgment in favor of the Government on the merits, we find that the motion was not brought within the one-year period specified by § 2255 and was therefore untimely. See United States v. Torres, 211 F.3d 836, 837 (4th Cir. 2000) (holding that the one-year period commences with this Court's mandate where no petition for certiorari is filed). We have reviewed Faircloth's alternative arguments regarding the timeliness of his motion and find them to be without merit. Accordingly, we deny a certificate of appealability, deny Faircloth's motions for appointment of counsel and for preparation of his sentencing transcript at Government expense, and dismiss the appeal on the ground that it is time-barred. 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