

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 00-7170**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID HUNG VO MANH DUONG, a/k/a "D", a/k/a  
Martin Nguyen,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CR-97-98-MU)

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Submitted: February 22, 2001

Decided: February 28, 2001

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Before WIDENER and WILLIAMS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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David Hung Vo Manh Duong, Appellant Pro Se. Brian Lee Whisler, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Hung Vo Manh Duong seeks to appeal the district court's order denying his motion for correction of sentence, pursuant to Fed. R. Crim. P. 35(c). We dismiss the appeal for lack of jurisdiction because Duong's notice of appeal was not timely filed.

Criminal defendants are accorded ten days after entry of the judgment or order being appealed. Fed. R. App. P. 4(b)(1). The district court can extend that time period for up to another thirty days upon a finding of good cause and excusable neglect. Fed. R. App. P. 4(b)(4). The appeal periods are mandatory and jurisdictional. Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978); United States v. Raynor, 939 F.2d 191, 197 (4th Cir. 1991).

Here, the district court entered the order denying the Rule 35 motion on June 19, 2000. Duong's notice of appeal was filed on August 14 and dated August 8, 2000, forty-nine days after the order. Therefore, because Duong failed to file a timely notice of appeal, we 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