

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7646

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JASON O'BRYAN MACKEY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Richard L. Voorhees, District Judge. (CR-96-114)

Submitted: February 21, 2002

Decided: March 4, 2002

Before WILKINS, MOTZ, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jason O'Bryan Mackey, Appellant Pro Se. Gretchen C.F. Shappert, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jason O'Bryan Mackey appeals from a district court's order denying relief on his Fed. R. Crim. P. 35(b) motion. We dismiss the appeal as untimely. Mackey did not file his notice of appeal within the ten-day appeal period or the subsequent thirty-day-extension period after the district court's order. Fed. R. App. P. 4(b); United States v. Breit, 754 F.2d 526, 528-29 (4th Cir. 1985) (ten-day appeal period set forth in Fed. R. App. P. 4(b) applies to Rule 35 motions). Consequently, we are without jurisdiction to hear the appeal. We deny leave to proceed in forma pauperis 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