

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-4649

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTONIO SHERROD JONES, a/k/a Birdie,

Defendant - Appellant.

No. 05-4751

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTONIO SHERROD JONES, a/k/a Birdie,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Norfolk. Jerome B. Friedman, District Judge. (2:03-cr-00172)

Submitted: August 31, 2006

Decided: September 5, 2006

Before MICHAEL, MOTZ, and GREGORY, Circuit Judges.

No. 05-4649 dismissed, No. 05-4751, affirmed by unpublished per curiam opinion.

Robert C. Neeley, Jr., ROBINSON, NEELEY & ANDERSON, Norfolk, Virginia, for Appellant. Laura P. Tayman, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Antonio S. Jones appeals from his criminal judgment and the district court order denying his motion for an extension of time to file a notice of appeal. Jones' counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Government has not filed a reply brief. Jones has filed a pro se supplemental brief. We dismiss the appeal from the criminal judgment as untimely and affirm the order denying the motion for an extension of time.

Jones' judgment was entered on October 6, 2004. His notice of appeal was due on October 21, 2004. See Fed. R. App. P. 4(b). Thus, the time period for Jones to file a notice of appeal expired on October 21, 2004. See Fed. R. App. P. 26(a). Jones filed a pro se notice of appeal on June 13, 2005. At the same time, he filed a motion for an extension of time to file a notice of appeal, arguing that his attorney did not file an appeal as he requested. The district court may grant an extension of time up to thirty days after the expiration of the appeal period, if there is a finding of good cause or excusable neglect. Fed. R. App. P. 4(b)(4). The district court only has authority, however, "to extend the time to file a notice of appeal for a period not to exceed thirty days from the expiration of the time otherwise prescribed by this Rule 4(b)." Fed. R. App. P. 4(b)(4). The time periods presented in Rule 4(b) are mandatory and jurisdictional.

United States v. Raynor, 939 F.2d 191, 196 (4th Cir. 1991). As the appeal was filed several months outside of the excusable neglect period provided in Rule 4(b)(4), the appeal is untimely and must be dismissed. For the same reason, the appeal from the district court's order denying the motion for an extension of time should be affirmed.

Accordingly, we dismiss the appeal from the criminal judgment and affirm the district court's order denying Jones' motion for an extension of time to file the appeal. We deny Jones' motion to relieve counsel. In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. This court requires that counsel inform Jones, in writing, of the right to petition the Supreme Court of the United States for further review. If Jones requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Jones. 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.

No. 05-4649: DISMISSED
No. 05-4751: AFFIRMED