

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7295

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY EARL MILLER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry F. Floyd, District Judge. (6:04-cr-00022-HFF-3)

Submitted: August 19, 2010

Decided: August 26, 2010

Before MOTZ, GREGORY, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Henry Earl Miller, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Earl Miller seeks to appeal his sentence. In criminal cases, the defendant must file the notice of appeal within ten days after the entry of judgment.¹ Fed. R. App. P. 4(b)(1)(A). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to thirty days to file a notice of appeal. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985). The district court entered judgment on June 24, 2005. The notice of appeal was filed on June 29, 2009.²

Because Miller failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the appeal. We deny all pending motions filed by Miller. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

¹ For appeals filed on or after December 1, 2009, the criminal appeal period is fourteen days. Fed. R. Crim. P. 4(b). Because the change took effect after Miller's notice of appeal was filed, it has no bearing on this case, and the applicable criminal appeal period is ten days.

² For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

before the court and argument would not aid the decisional process.

DISMISSED