

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 11-6768**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES BRANSON MAINOR, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas David Schroeder, District Judge. (1:08-cr-00121-TDS-1)

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Submitted: December 20, 2011                      Decided: December 22, 2011

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Before MOTZ, DUNCAN, and DIAZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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James Branson Mainor, Jr., Appellant Pro Se. Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Branson Mainor, Jr., seeks to appeal the district court's order accepting the magistrate judge's recommendation to deny his 28 U.S.C.A. § 2255 (West Supp. 2011) motion, and has filed a motion to proceed in forma pauperis. We deny Mainor's motion to proceed in forma pauperis and dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on February 8, 2011. The notice of appeal was filed on June 6, 2011.\* Because Mainor failed to file a timely notice of appeal

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\* Although Mainor's notice of appeal was not filed in the district court until June 7, 2011, Mainor's notice of appeal was postmarked on June 6, 2011. See Houston v. Lack, 487 U.S. 266, 276 (1988) (holding that a pro se prisoner's notice of appeal is (Continued)

or to obtain an extension or reopening of the appeal period, 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

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considered filed the moment it is delivered to prison authorities for mailing to the court).