

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4315

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DWAYNE LEE BENOIST,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:08-cr-00112-TDS-1)

Submitted: July 9, 2012

Decided: August 3, 2012

Before WILKINSON, NIEMEYER, and FLOYD, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Dhamian Blue, BLUE, STEPHENS & FELLERS, LLP, Raleigh, North Carolina, for Appellant. Graham Tod Green, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwayne Lee Benoist appeals the district court's order denying his motion for an extension of time to file a notice of appeal from his conviction and sentence. To the extent Benoist challenges his underlying conviction and sentence, the Government seeks to dismiss the appeal as untimely. We affirm in part and dismiss in part.

In criminal cases, a defendant must file a notice of appeal within fourteen days after the entry of judgment. 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). Although the time limitations imposed by Rule 4(b) are not jurisdictional, they "must be enforced by th[e] court when properly invoked by the government." United States v. Mitchell, 518 F.3d 740, 744 (10th Cir. 2008).

The district court entered judgment in Benoist's criminal case on March 24, 2010. Benoist filed a motion for an extension of time to file a direct appeal no earlier than February 2, 2012.* The district court denied the motion for

* For the purpose of this appeal, we assume that the date appearing on the document is the earliest date it could have (Continued)

being inordinately late, and Benoist filed timely notice of appeal of that order on April 17, 2012. Finding no error in the district court's denial of Benoist's motion for an extension of time, we affirm. To the extent Benoist attempts to challenge his conviction and sentence, we grant the Government's motion to dismiss the direct appeal as untimely because Benoist failed to file a timely notice of appeal or to obtain an extension of the appeal period

Accordingly, we affirm the district court's order denying the motion for an extension of time, and grant the Government's motion to dismiss the appeal of the underlying criminal judgment. 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.

AFFIRMED IN PART;
DISMISSED IN PART

been properly delivered to prison officials for mailing to the court. Fed. R. App. 4(c); Houston v. Lack, 487 U.S. 266 (1988).