

CORRECTED OPINION

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 99-4095

KEITH ALAN COOTE,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Richard L. Voorhees, District Judge.
(CR-97-180)

Submitted: September 14, 1999

Decided: October 4, 1999

Corrected opinion filed: October 14, 1999

Before WILKINS and HAMILTON, Circuit Judges,
and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

COUNSEL

Michael A. Kolb, Charlotte, North Carolina, for Appellant. Robert J.
Higdon, Jr., OFFICE OF THE UNITED STATES ATTORNEY,
Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Keith Alan Coote entered a "straight up" guilty plea to conspiracy to possess with intent to distribute heroin within one thousand feet of a playground in violation of 21 U.S.C. § 846 (1994). The court entered judgment against Coote on June 26, 1998. A letter by Coote, which was construed as notice of appeal, was filed on February 3, 1999. Because Coote's notice of appeal is untimely, we dismiss this appeal for lack of jurisdiction.

The Government has filed a motion to dismiss Coote's criminal appeal as untimely. The time periods for filing notices of appeal are governed by Fed. R. App. P. 4. These periods are "mandatory and jurisdictional." United States v. Raynor, 939 F.2d 191, 197 (4th Cir. 1991). Defendants in criminal prosecutions have ten days within which to file in the district court notices of appeal from judgments or final orders. See Fed. R. App. P. 4(b). The only exceptions to the appeal period are when the district court extends the time to appeal "[u]pon a showing of excusable neglect." Id.

The district court entered judgment against Coote on June 26, 1998; Coote's "notice of appeal" was filed on February 3, 1999. Coote's failure to note a timely appeal or obtain an extension of the appeal period leaves this Court without jurisdiction to consider the merits of his appeal. Accordingly, we grant the Government's motion to dismiss and dismiss this appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and oral argument would not aid the decisional process.

DISMISSED