

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6417

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS NEIL PICKETT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (7:04-cr-00047-F-1; 7:06-cv-00143-F)

Submitted: August 27, 2008

Decided: September 8, 2008

Before MOTZ and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Thomas Neil Pickett, Appellant Pro Se. Steve R. Matheny, Assistant United States Attorney, Eric David Gouliau, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Neil Pickett seeks to appeal the district court's order dismissing his motion under 28 U.S.C.A. § 2255 (West 2006 & Supp. 2008). We 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). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on December 17, 2007. The notice of appeal was filed on March 19, 2008.* Because Pickett failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the

*Pickett's motion for an enlargement of time to file a Fed. R. Civ. P. 59 or Fed. R. Civ. P. 60 motion, signed on December 28, 2007, did not toll the period to file a notice of appeal because a district court may not extend the time to file a Rule 59 or Rule 60 motion. Fed. R. Civ. P. 6(b)(2); Alston v. MCI Communications Corp., 84 F.3d 705, 706 (4th Cir. 1996).

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

DISMISSED