

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6281

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARC ANDRE FLEURIVAL, a/k/a Real, a/k/a Mark Andre Fleurival,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at
Harrisonburg. Glen E. Conrad, Senior District Judge. (5:06-cr-00041-GEC-4)

Submitted: June 24, 2021

Decided: June 28, 2021

Before KING and THACKER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed in part, dismissed in part by unpublished per curiam opinion.

Marc Andre Fleurival, Appellant Pro Se. Laura Day Rottenborn, OFFICE OF THE
UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marc Andre Fleurival appeals from the district court's order granting his motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(B), and § 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5222; reducing his sentence of imprisonment to time served; and reducing his term of supervised release to eight years. Fleurival also seeks to appeal from the August 31, 2007, criminal judgment. For the reasons that follow, we affirm in part and dismiss in part.

On appeal, Fleurival pursues arguments that he did not present in his First Step Act motion, and most of those arguments attack his conviction. However, we conclude that Fleurival may not challenge his conviction in an appeal from the district court's order granting his First Step Act motion. Insofar as Fleurival's appellate arguments might be construed to object to the eight-year term of supervised release, we emphasize that Fleurival asked the district court to impose that term. Consequently, Fleurival may not now fault the district court for doing so. *See United States v. Day*, 700 F.3d 713, 727 n.1 (4th Cir. 2012) (explaining invited error doctrine). Because Fleurival has not demonstrated that the district court abused its discretion in granting his First Step Act motion, we affirm the district court's order. *See United States v. Collington*, 995 F.3d 347, 358 (4th Cir. 2021) (providing standard of review).

Turning to Fleurival's attempt to appeal from the August 31, 2007, criminal judgment, we conclude that Fleurival's appeal is untimely. *See Fed. R. App. P. 4(b)(1)(A)*. And we exercise our discretion to sua sponte dismiss Fleurival's untimely appeal from the criminal judgment. *See United States v. Oliver*, 878 F.3d 120, 129 (4th Cir. 2017)

(explaining that appellate court may, in certain circumstances, sua sponte dismiss untimely criminal appeal).

We thus affirm in part and dismiss in part. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED IN PART;
DISMISSED IN PART*