

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 99-7705**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ELVIS FERNANDO HENRIQUEZ,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CR-97-88-A)

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Submitted: March 23, 2000

Decided: March 30, 2000

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Before LUTTIG, WILLIAMS, and MICHAEL, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Elvis Fernando Henriquez, Appellant Pro Se. William Neil Hammerstrom, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Elvis Fernando Henriquez seeks to appeal the district court's order denying relief on his motion that was construed as a 28 U.S.C.A. § 2255 (West Supp. 1999) motion. We dismiss the appeal for lack of jurisdiction because Henriquez' notice of appeal was not timely filed.

When the United States is a litigant, parties are accorded sixty days after entry of the district court's final judgment or order to note an appeal, see Fed. R. App. P. 4(b)(1), 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. Director, Dep't of Corrections, 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 July 22, 1999. Henriquez' notice of appeal was filed on December 10, 1999. Because Henriquez failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny a certificate of appealability 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