

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6522

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT MADISON BROOKS, a/k/a Pooh,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Joseph F. Anderson, District Judge. (0:02-cr-01173-JFA-2; 0:09-cv-70086-JFA)

Submitted: July 7, 2011

Decided: July 28, 2011

Before KING, DUNCAN, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Madison Brooks, Appellant Pro Se. Jeffrey Mikell Johnson, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Madison Brooks seeks to appeal the district court's orders denying his 28 U.S.C.A. § 2255 (West Supp. 2011) motion and denying his motion to reconsider. We dismiss that part of the appeal from the denial of the § 2255 motion for lack of jurisdiction because the notice of appeal was not timely filed as to that order. As to the order denying reconsideration, we deny a certificate of appealability and dismiss the appeal.

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). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on November 16, 2010. The notice of appeal was filed on April 13, 2011. The court's order granting Brooks' motion for an extension of time in which to file a motion to reconsider did not defer the appeal period. See Panhorst v. United States, 241 F.3d 367, 369-70 (4th Cir. 2001). Because Brooks failed to file

a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal from the order denying the § 2255 motion.

In order for Brooks to appeal the denial of his motion to reconsider, he must be granted a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85. We have independently reviewed the record and conclude that Brooks has not made the requisite showing.

Accordingly, 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