

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3658

United States of America,

Appellee,

v.

Byron Spears,

Appellant.

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* Appeal form the United States
* District Court for the
* Western District of Missouri.
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* [UNPUBLISHED]
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Submitted: October 19, 2005

Filed: October 26, 2005

Before MELLOY, MAGILL, and GRUENDER, Circuit Judges.

PER CURIAM.

In this criminal case, Byron Spears appeals the district court's¹ judgment denying his motion for a downward departure based on poor health. We lack jurisdiction, however, because Spears filed his notice of appeal well beyond ten days after the order denying relief, and even if his pleading could be construed as civil in nature, his notice of appeal was filed more than sixty days after the dispositive ruling. See Fed. R. App. P. 4(a)(1)(B); 4(b)(1)(A); United States v. Stute Co., 402 F.3d 820, 822 (8th Cir. 2005) (timely notice of appeal is mandatory and jurisdictional).

¹The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri.

Accordingly, the motion for appointment of counsel is denied, and we dismiss this appeal. See 8th Cir. R. 47A(a).
