

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6736

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DUALA CHAPPELL,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Charlottesville. Samuel G. Wilson, District Judge. (3:95-cv-00017-3-SGW)

Submitted: September 11, 2008

Decided: September 16, 2008

Before WILKINSON and NIEMEYER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Larry W. Shelton, Federal Public Defender, Roanoke, Virginia, for Appellant. Jean Barrett Hudson, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Duala Chappell seeks to appeal the district court's order denying his motion for reduction of sentence under 18 U.S.C.A. § 3582 (West 2000 & Supp. 2008). In criminal cases, the defendant must file the notice of appeal within ten days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A); see United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000) (holding that § 3582 proceeding is criminal in nature and ten-day appeal period applies). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to thirty days to file a notice of appeal. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered its order denying the motion for reduction of sentence on March 20, 2008. Chappell filed the notice of appeal on May 2, 2008, after the ten-day period expired but within the thirty-day excusable neglect period. Because the notice of appeal was filed within the excusable neglect period, we remand the case to the district court for the court to determine whether Chappell has shown excusable neglect or good cause warranting an extension of the ten-day appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED