

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6868

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARNOLD CHARLES CABARRIS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:98-cr-00271-REP-1)

Submitted: October 29, 2009

Decided: December 9, 2009

Before MICHAEL, DUNCAN, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Arnold Charles Cabarris, Appellant Pro Se. Norval George Metcalf, Assistant United States Attorney, Michael Cornell Wallace, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Arnold Charles Cabarris appeals the district court's order denying his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006).^{*} We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See United States v. Cabarris, No. 3:98-cr-00271-REP-1 (E.D. Va. Apr. 14, 2009). 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.

AFFIRMED

^{*} Cabarris's notice of appeal was filed one day late, but he timely sought an extension of time pursuant to Fed. R. App. P. 4(b)(4) for excusable neglect or good cause. In its consideration of Cabarris's motion, the district court found no excusable neglect based on its assessment of the merits of the appeal. Such a merits review by the district court of its own order is not an appropriate consideration under Rule 4(b)(4). However, because the time limits of Rule 4(b) are not jurisdictional, see Bowles v. Russell, 551 U.S. 205, 208-13 (2007); United States v. Urutyan, 564 F.3d 679, 683-86 (4th Cir. 2009), and the Government has not moved to dismiss the appeal as untimely, we decline to dismiss the appeal as untimely and instead address the merits of the motion for sentence reduction.