

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-7477

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELIJAH GAYLON JONES,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry F. Floyd, District Judge. (6:07-cr-00704-HFF-1; 6:10-cv-70268-HFF)

Submitted: April 19, 2012

Decided: May 8, 2012

Before AGEE, KEENAN, and DIAZ, Circuit Judges.

Remanded by unpublished per curiam opinion.

Elijah Gaylon Jones, Appellant Pro Se. William Corley Lucius, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Elijah Gaylon Jones seeks to appeal the district court's order dismissing his 28 U.S.C.A. § 2255 (West Supp. 2011) motion as untimely. In a civil case in which the United States or its officer or agency is a party, parties have sixty days following the entry of the district court's final judgment or order in which to file a notice of appeal. Fed. R. App. P. 4(a)(1)(B). However, if a party moves for an extension of time to appeal within thirty days after expiration of the original appeal period and demonstrates excusable neglect or good cause, a district court may extend the time to file a notice of appeal. Fed. R. App. P. 4(a)(5)(A); Washington v. Bumgarner, 882 F.2d 899, 900-01 (4th Cir. 1989).

Jones' notice of appeal was received in the district court after the expiration of the sixty-day appeal period but within the thirty-day excusable neglect period. In his notice of appeal, Jones requested an extension of time to appeal because he was in transit when the district court served him with notice of its judgment and he did not receive the judgment until he returned to his assigned correctional facility on September 19, 2011. We conclude this letter should be construed as a motion pursuant to Rule 4(a)(5)(A). Accordingly, we remand the case to the district court for the limited purpose of determining whether Jones has demonstrated excusable neglect or

good cause warranting an extension of the sixty-day appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED