

UNPUBLISHED  
**UNITED STATES COURT OF APPEALS**  
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

RANDOLPH DENNIS HUTCHENS, II,  
*Defendant-Appellant.*

No. 00-4818

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

MISTIE MARIE CLARK,  
*Defendant-Appellant.*

No. 00-4819

Appeals from the United States District Court  
for the Northern District of West Virginia, at Martinsburg.  
W. Craig Broadwater, District Judge.  
(CR-00-29)

Submitted: February 13, 2001

Decided: February 22, 2001

Before WIDENER, MOTZ, and GREGORY, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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**COUNSEL**

Michael Shawn Santa Barbara, OLLAR & SANTA BARBARA, Martinsburg, West Virginia; Byron Craig Manford, Martinsburg, West

Virginia, for Appellants. Robert H. McWilliams, Jr., Assistant United States Attorney, Wheeling, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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### OPINION

#### PER CURIAM:

Codefendants Randolph D. Hutchens and Mistie M. Clark pled guilty to distribution of crack cocaine, were sentenced, and judgment was entered in the district court on October 27, 2000. Counsel for Hutchens and Clark each filed a notice of appeal on November 8, 2000, twelve days after entry of judgment. Pursuant to Fed. R. App. P. (4)(b)(1), a defendant in a criminal case must file his notice of appeal within ten days of entry of judgment. On a finding of excusable neglect or good cause, the district court can extend the time for up to thirty days beyond the original period. Fed. R. App. P. 4(b)(4).

The Government has moved to dismiss these consolidated appeals as untimely. Both Hutchens and Clark oppose the motion to dismiss, and Clark moves that the case be remanded to the district court for a determination of excusable neglect. Because the notices of appeal were filed within the prescribed period, we deny the Government's motion to dismiss, grant the motion to remand in No. 00-4819, and remand both cases to the district court for a determination of good cause or excusable neglect pursuant to Fed. R. App. P. 4(b)(4). 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.

*REMANDED*