

UNPUBLISHED

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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

BERNARD DONNELL SHERRILL, a/k/a  
Nard,

*Defendant-Appellant.*

No. 01-7942

Appeal from the United States District Court  
for the Western District of North Carolina, at Charlotte.  
Terrence W. Boyle, Chief District Judge.  
(CR-95-5, CA-98-444-3)

Submitted: March 28, 2002

Decided: April 24, 2002

Before MOTZ and KING, Circuit Judges, and  
HAMILTON, Senior Circuit Judge.

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Remanded with instructions by unpublished per curiam opinion.

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**COUNSEL**

Bernard Donnell Sherrill, Appellant Pro Se. Gretchen C. F. Shappert,  
Assistant United States Attorney, Charlotte, North Carolina, 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Unpublished opinions are not binding precedent in this circuit.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:

Bernard Donnell Sherrill appeals from the district court's order denying his motion for reconsideration of the denial of his 28 U.S.C.A. § 2255 (West Supp. 2001) motion. The district court entered the order on June 8, 2001. On September 4, 2001, Sherrill filed a notice of appeal and motion for an extension of time to file the notice of appeal due to excusable neglect, which the district court entered on September 11, 2001. The district court forwarded the notice of appeal without making a determination on the motion for an extension of time.

Parties in a civil action where the United States is a party have sixty days following a final order in which to file a notice of appeal. Fed. R. App. P. 4(a)(1)(B). The district court may grant an extension of this time up to thirty days upon a showing of good cause or excusable neglect. Fed. R. App. P. 4(b)(4); *United States v. Reyes*, 759 F.2d 351, 353 (4th Cir. 1985). If the defendant files his notice of appeal outside the applicable appeal period, but within the thirty-day extension period, the district court must make factual findings concerning whether there was excusable neglect that warrants an extension of the appeal period. *Reyes*, 759 F.2d at 353-54.

Sherrill filed his notice of appeal eighty-seven days after the district court entered its judgment. While this filing was after the sixty-day limit, it was within the thirty-day extension period applicable upon a showing of excusable neglect or good cause. Because the district court made no factual findings on this issue, we remand the case to the district court with instructions to make factual findings concerning whether there was excusable neglect or good cause warranting an extension of the sixty-day appeal period. We defer ruling on Sherrill's motion for permission to file an oversized brief and grant his motion to seal the presentence report. We dispense with oral argu-

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ment, because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*REMANDED WITH INSTRUCTIONS*