

UNPUBLISHED  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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
v.  
DARRELL L. PADGETT,  
*Defendant-Appellant.*

No. 02-6559

Appeal from the United States District Court  
for the Southern District of West Virginia, at Bluefield.  
Elizabeth V. Hallanan, Senior District Judge.  
(CR-91-166, CA-01-4)

Submitted: August 28, 2002

Decided: September 25, 2002

Before WIDENER, NIEMEYER, and MICHAEL, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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**COUNSEL**

Darrell L. Padgett, Appellant Pro Se. Michael Lee Keller, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, 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Unpublished opinions are not binding precedent in this circuit.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:

Darrell L. Padgett seeks to appeal the district court's order denying his motion for reduction of sentence under 18 U.S.C. § 3582 (2000). In criminal cases, the defendant must file his notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A); *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, the district court may grant an extension of time to file of up to thirty days upon a showing of excusable neglect or good cause. 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 Padgett's timely motion for reconsideration on February 26, 2002; the ten-day appeal period expired on March 8. Padgett filed his notice of appeal after the ten-day appeal period expired but within the thirty-day excusable neglect period. Because Padgett's notice of appeal was filed within the excusable neglect period, we grant Padgett's motion to proceed in forma pauperis and remand the case to the district court for the court to determine whether Padgett 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*