

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7776

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

VANCE LAMONT CHRISTIAN,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. William D. Quarles, Jr., District Judge; Frederic N. Smalkin, Senior District Judge. (CR-01-10-S)

Submitted: June 30, 2003

Decided: July 25, 2003

Before LUTTIG, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Vance Lamont Christian, Appellant Pro Se. James Gerard Pyne, Assistant United States Attorney, Albert David Copperthite, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Vance Lamont Christian seeks to appeal the district court's order denying his motion to correct his sentence under Fed. R. Crim. P. 35(b). 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); see United States v. Breit, 754 F.2d 526, 528 (4th Cir. 1985) (applying ten-day appeal period to Rule 35 motion). With or without a motion, the district court may grant an extension of time 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 the motion for reduction of sentence on October 15, 2002; the ten-day appeal period expired on October 25, 2002. See Fed. R. App. P. 26.* Christian filed his notice of appeal after the ten-day period expired but within the thirty-day excusable neglect period. Because the notice of appeal was filed within the excusable neglect period, we remanded the case to the district court for a determination of whether Christian demonstrated excusable neglect or good cause warranting an extension of the ten-day appeal period. The district

* Effective December 1, 2002, Rule 26 was revised to exclude "intermediate Saturdays, Sundays, and legal holidays" when the time period is less than eleven days. Previously, weekends and holidays generally were excluded only when the time period was less than seven days.

court concluded that Christian failed to demonstrate excusable neglect or good cause and we find no abuse of discretion. Breit, 754 F.2d at 528 (providing standard of review). Because he failed to timely file an appeal or obtain an extension for filing an appeal, we dismiss the appeal for lack of jurisdiction. Christian's motion to proceed in forma pauperis on appeal is denied. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court.

DISMISSED