

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4074

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CLIFTON BERNARD HARRIS, a/k/a Big Baby,

Defendant - Appellant.

Appeal from the United States District Court for the Middle
District of North Carolina, at Durham. Frank W. Bullock, Jr.,
District Judge. (CR-03-191)

Submitted: June 25, 2004

Decided: July 13, 2004

Before WILKINSON, NIEMEYER, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Clifton Bernard Harris, Appellant Pro Se. Randall Stuart Galyon,
Assistant United States Attorney, Greensboro, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Clifton Bernard Harris seeks to appeal his conviction and sentence. 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). 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 judgment on December 23, 2003; the ten-day appeal period expired on January 8, 2004. See Fed. R. App. P. 26(a)(2) (providing that intermediate Saturdays, Sundays and legal holidays are excluded when the period is less than eleven days). Harris filed his pro se notice of appeal pro se on January 16, 2004, which was 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 remand the case to the district court for the court to determine whether Harris 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. We will defer acting on the Government's motion to dismiss this appeal until the record is returned to us.

REMANDED