

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4474

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOSEPH IYOBOSA OSAMWONYI,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CR-03-435)

Submitted: February 4, 2005

Decided: March 2, 2005

Before NIEMEYER, LUTTIG, and KING, Circuit Judges.

Remanded by unpublished per curiam opinion.

Dwight E. Crawley, Hopewell, Virginia, for Appellant. S. David Schiller, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Joseph Iyobosa Osamwonyi 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 May 11, 2004; the ten-day appeal period expired on May 25, 2004. See Fed. R. App. P. 26(a)(2) (excluding intermediate weekends and holidays from the ten-day calculation). Osamwonyi 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 remand the case to the district court for the court to determine whether Osamwonyi 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. Osamwonyi's motion to relieve or substitute counsel is denied.

REMANDED