

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7354

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LUTHER T. GOLDSMITH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, Chief District Judge. (CR-01-29)

Submitted: February 8, 2006

Decided: February 27, 2006

Before NIEMEYER, WILLIAMS, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Luther T. Goldsmith, Appellant Pro Se. Nicholas Stephan Altimari, 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Unpublished opinions are not binding precedent in this circuit.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:

Luther Thomas Goldsmith 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 § 3582 proceeding is criminal in nature and ten-day appeal period applies and collecting cases). In criminal appeals, the district court may extend the time in which to note an appeal up to thirty days upon a finding of excusable neglect or good cause, with or without a motion or notice. 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 on its docket on July 18, 2005, and the ten-day appeal period expired on August 1, 2005. Goldsmith filed his notice of appeal after the ten-day appeal period expired but within the thirty-day excusable neglect period. Because Goldsmith's notice of appeal was filed within the excusable neglect period, we remand the case to the district court for that court to determine whether Goldsmith 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

*Goldsmith asserted in his notice of appeal that he did not receive the district court's order until thirty days after it was entered.

this court for further consideration. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

REMANDED