

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-8064

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GREGG LAMONT SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Alexander Williams, Jr., District Judge. (8:02-cr-00215-AW; 8:05-cv-02532-AW)

Submitted: July 31, 2007

Decided: August 15, 2007

Before WILKINSON and MOTZ, Circuit Judges, and WILKINS, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Gregg Lamont Smith, Appellant Pro Se. Michael R. Pauze, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gregg Lamont Smith seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion, entered on July 17, 2006. According Smith the benefit of Fed. R. App. P. 4(c) and Houston v. Lack, 487 U.S. 266 (1988), the earliest date his notice of appeal may be deemed filed is December 5, 2006, beyond both the sixty-day appeal period under Fed. R. App. P. 4(a)(1)(B), and the thirty-day excusable neglect period allowed under Fed. R. App. P. 4(a)(5).

We construe Smith's notice of appeal, in which he alleged he did not timely receive the district court's final order, as a motion to reopen the time to note an appeal under Fed. R. App. P. 4(a)(6). See United States v. Feuver, 236 F.3d 725, 729 & n.7 (D.C. Cir. 2001). Accordingly, we remand the case to the district court for the limited purpose of permitting that court to determine whether Smith can satisfy the requirements for reopening the appeal period set forth in Fed. R. App. P. 4(a)(6). See Ogden v. San Juan County, 32 F.3d 452, 454 (10th Cir. 1994). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED