

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-5143

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMMY LEE MCALPIN,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Statesville. Richard L.
Voorhees, District Judge. (5:07-cr-00008-RLV-CH-3)

Submitted: April 16, 2009

Decided: May 11, 2009

Before NIEMEYER, KING, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Ketanji Brown Jackson, MORRISON & FOERSTER, LLP, Washington,
D.C., for Appellant. Gretchen C. F. Shappert, United States
Attorney, Amy Elizabeth Ray, Assistant United States Attorney,
Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Timmy Lee McAlpin seeks to appeal his conviction and sentence. In criminal cases, the defendant must file the notice of appeal within ten days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to thirty days to file a notice of appeal. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered judgment on October 17, 2008. McAlpin filed the notice of appeal on November 13, 2008, after the ten-day period expired but within the thirty-day excusable neglect window. 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 McAlpin 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 defer acting on the Government's motion to dismiss this appeal until the record is returned to this court.

REMANDED