

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6138

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARY ALICE AVERY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Lacy H. Thornburg, District Judge. (3:00-cr-00210-LHT)

Submitted: April 24, 2008

Decided: April 29, 2008

Before KING and SHEDD, Circuit Judges, and WILKINS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Mary Alice Avery, Appellant Pro Se. Gretchen C.F. Shappert, United States Attorney, C. Nick Williams, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mary Alice Avery seeks to appeal from her judgment of conviction, which order was entered by the district court on October 16, 2002. Specifically, she seeks to challenge her sentence under Kimrough v. United States, 128 S. Ct. 558 (2007). Avery's notice of appeal was filed on December 17, 2007. In criminal cases, the defendant must file a 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 court may grant an extension of time to file of up to thirty days upon a showing of excusable neglect. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985). Because Avery failed to file a timely notice of appeal, we dismiss the appeal. However, this decision is rendered without prejudice to Avery's ability to pursue relief under 18 U.S.C. § 3582(c)(2) (2000). We also deny Avery's motion for appointment of counsel. 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.

DISMISSED