

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6929

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KANTON TALLEY,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:05-cr-00207-1)

Submitted: March 11, 2009

Decided: March 27, 2009

Before MICHAEL, TRAXLER, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kanton Talley, Appellant Pro Se. John J. Frail, Assistant United States Attorney, Charleston, West Virginia, Richard Gregory McVey, Assistant United States Attorney, Huntington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kanton Talley seeks to appeal the district court's order granting him a reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(2) (2006). 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); see United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000) (holding that § 3582 proceeding is criminal in nature and ten-day appeal period applies). 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 its order granting Talley's sentence reduction on May 2, 2008. The notice of appeal was filed, at earliest, on May 20, 2008.* Because Talley failed to file a timely notice of appeal or obtain an extension of the appeal period, we remanded this case to the district court for the court to determine whether Talley could demonstrate excusable neglect or good cause to justify extending the ten-day appeal period. In accordance with our remand order, the

* Because Talley was incarcerated and not represented by counsel, this filing date is determined pursuant to Houston v. Lack, 487 U.S. 266, 276 (1988).

district court received argument and evidence pertaining to the issue and determined that Talley had failed to make the requisite showing.

We have thoroughly reviewed the record and agree that Talley has failed to demonstrate good cause or excusable neglect to justify a relaxation of the ten-day appeal period called for in Fed. R. App. P. 4(b)(1)(A). See generally Bowles v. Russell, 551 U.S. 205, ___, 127 S. Ct. 2360, 2363-66 (2007); United States v. Mitchell, 518 F.3d 740, 750 (10th Cir. 2008). Accordingly, we dismiss the appeal. 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