

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6092

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL J. THOMPSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:05-cr-00480-TSE-1)

Submitted: July 8, 2009

Decided: August 14, 2009

Before NIEMEYER and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Michael J. Thompson, Appellant Pro Se. Christina Lundberg Medzius, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael J. Thompson seeks to appeal the district court's order granting the Government's Fed. R. Crim. P. 35(b) motion. 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. Little, 392 F.3d 671, 680-81 (4th Cir. 2004) (applying ten-day appeal period to appeal of a Rule 35 order). Although the time limitations imposed by Rule 4(b) are not jurisdictional, United States v. Urutyan, 564 F.3d 679, 685 (4th Cir. 2009), they "must be enforced by th[e] court when properly invoked by the government." United States v. Mitchell, 518 F.3d 740, 744 (10th Cir. 2008). The Government has moved to dismiss Thompson's appeal as untimely.

The district court entered its order on December 8, 2008. Thompson asserts that he did not receive notice of the order until January 5, 2009. He filed his notice of appeal at the earliest on January 6, 2009, after the ten-day period expired but within the thirty-day excusable neglect period. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985). 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 Thompson 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.

REMANDED