

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6675

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGEL MANUEL GONZALEZ,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:05-cr-00007-JPB-JES-3)

Submitted: July 27, 2010

Decided: August 11, 2010

Before TRAXLER, Chief Judge, and KING and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Angel Manuel Gonzalez, Appellant Pro Se. Paul Thomas Camilletti, Thomas Oliver Mucklow, Assistant United States Attorneys, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Angel Manuel Gonzalez seeks to appeal the district court's order granting his motion for reduction of sentence under 18 U.S.C. § 3582 (2006). The Government has moved to dismiss the appeal as untimely, and Gonzalez has responded. 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) (applicable to notices of appeal filed before Dec. 1, 2009); see United States v. Goodwyn, 596 F.3d 233, 235 n.* (4th Cir. 2010) ("[Section] 3582 motions – which seek only to alter terms of imprisonment – are criminal in nature."), cert. denied, ___ U.S. ___, 78 U.S.L.W. 3763 (U.S. June 28, 2010) (No. 09-11064). 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 the motion for reduction of sentence on February 23, 2009. The notice of appeal was filed on April 8, 2009.* We previously remanded this case to the district court for a determination of whether Gonzalez could show good cause or excusable neglect

* See Houston v. Lack, 487 U.S. 266, 276 (1988).

warranting an extension of the appeal period. On remand, the district court concluded that an extension of the appeal period was not warranted, and we find no abuse of discretion in that decision. See United States v. Breit, 754 F.2d 526, 529 (4th Cir. 1985) (stating standard of review).

Because Gonzalez failed to file a timely notice of appeal or to obtain an extension of the appeal period, we grant the Government's motion to dismiss and 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