

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6974

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD DWAYNE ALLISON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. Glen M. Williams, Senior District Judge. (1:04-cr-00093-gmw-pms-1)

Submitted: July 15, 2009

Decided: July 29, 2009

Before NIEMEYER, MICHAEL, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Richard Dwayne Allison, Appellant Pro Se. Jennifer R. Bockhorst, Assistant United States Attorney, Abingdon, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard Dwayne Allison seeks to appeal the district court's order denying his motion for reduction of sentence under 18 U.S.C. § 3582 (2006). The Government has moved to dismiss the appeal as untimely filed. 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 denying the motion for reduction of sentence on April 7, 2009. Allison filed the notice of appeal on May 15, 2009, after the ten-day period expired but within the thirty-day excusable neglect period. 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 Allison 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