

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-8038

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAWRENCE TERRELL ROGERS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Malcolm J. Howard, Senior District Judge. (5:01-cr-00077-H-1)

Submitted: June 1, 2010

Decided: June 7, 2010

Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Lawrence Terrell Rogers, Appellant Pro Se. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lawrence Terrell Rogers seeks to appeal the district court's order granting his motion for reduction of sentence under 18 U.S.C. § 3582 (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 Rule 4(b)(1)(A) 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 the motion for reduction of sentence on March 16, 2009. The notice of appeal was filed on October 30, 2009. Because Rogers failed to file a timely notice of appeal or to obtain an extension of

* Fed. R. App. P. 4 was amended effective December 1, 2009, to establish a fourteen-day appeal period. Additionally, Fed. R. App. P. 26, governing computation of time periods, was amended effective December 1, 2009, to require counting all calendar days, rather than omitting weekends and holidays, as formerly required. Because the prior version of the rules applies in this appeal, that is the version cited in this opinion.

the appeal period, we grant the Government's motion to 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