

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

MICHAEL LATRON TURNER,  
*Defendant-Appellant.*

No. 01-4149

Appeal from the United States District Court  
for the Western District of North Carolina, at Statesville.  
Richard L. Voorhees, District Judge.  
(CR-96-10-V, CA-98-24-V)

Submitted: June 10, 2002

Decided: July 19, 2002

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

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Remanded with instructions by unpublished per curiam opinion.

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**COUNSEL**

Sean P. Devereux, SEAN P. DEVEREUX, P.A., Asheville, North Carolina, for Appellant. Robert Jack Higdon, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

**OPINION**

## PER CURIAM:

Michael Latron Turner appeals his conviction and 140 month sentence imposed pursuant to a guilty plea for conspiracy to possess with intent to distribute cocaine, cocaine base, and marijuana, in violation of 21 U.S.C. § 846 (1994). Although Turner's sentence was imposed on June 23, 1997, an amended judgment was filed on January 17, 2001 to allow Turner an opportunity to file a direct appeal. On February 3, 2001, Turner filed a notice of appeal. Turner did not request an extension of time to appeal and none was granted by the district court.

In criminal cases, a defendant must file his notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b). With or without a motion, the district court may grant an extension of this time up to thirty days upon a showing of good cause or excusable neglect. Fed. R. App. P. 4(b)(4); *United States v. Reyes*, 759 F.2d 351, 353 (4th Cir. 1985). If the defendant files his notice of appeal outside the ten-day appeal period, but within the thirty-day extension period, the district court must make factual findings concerning whether there was excusable neglect that warrants an extension of the appeal period. *Reyes*, 759 F.2d at 353-54. Turner filed his notice of appeal seventeen days after the district court entered its judgment. While this filing was after the ten-day limit, it was within the thirty-day extension period applicable upon a showing of excusable neglect or good cause.

Under these circumstances, we remand the case to the district court with instructions to make factual findings concerning whether there was excusable neglect or good cause warranting an extension of the ten-day appeal period. 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.

*REMANDED WITH INSTRUCTIONS*