

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. SENG HOA CHEANG, <i>Defendant-Appellant.</i>
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No. 02-7340

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Leonie M. Brinkema, District Judge.
(CR-00-8-A)

Submitted: November 12, 2002

Decided: December 2, 2002

Before WILLIAMS, MOTZ, and KING, Circuit Judges.

Remanded with instructions by unpublished per curiam opinion.

COUNSEL

Christopher Ford Cowan, COWAN & OWEN, P.C., Richmond, Virginia, for Appellant. James L. Trump, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Seng Hoa Cheang appeals the district court's order granting the Government's motion for a reduction of his sentence from 132 months' to eighty-eight months' imprisonment due to his substantial assistance. Although Cheang's sentence was imposed on August 20, 2002, Cheang did not file a notice of appeal until September 6, 2002. Cheang 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. Cheang 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. Cheang's appellate counsel has filed a motion requesting this court to direct the district court to appoint local counsel on remand who practices in the Alexandria, Virginia, area. We deny this motion as appointment of counsel on remand is appropriately left to the sound discretion of the district court. 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