

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-6587**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANNE MARIE CHAMBERS, a/k/a Sugar, a/k/a Anne Marie Jack,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, Chief District Judge. (3:94-cr-00089-JRS-2)

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Submitted: September 24, 2009

Decided: October 28, 2009

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Before KING and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Remanded by unpublished per curiam opinion.

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Anne Marie Chambers, Appellant Pro Se. Richard Daniel Cooke, Assistant United States Attorney, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anne Marie Chambers seeks to appeal the district court's order denying her 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 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 February 26, 2009. The ten-day appeal period expired on March 12, 2009. See Fed. R. App. P. 26(a)(2) (providing "intermediate Saturdays, Sundays, and legal holidays" are excluded when time period is less than eleven days). The thirty-day excusable neglect period expired on Monday, April 13, 2009. See Fed. R. App. P. 26(a)(3).

A pro se prisoner's notice of appeal is considered filed the moment it is delivered to prison authorities for mailing to the court. Houston v. Lack, 487 U.S. 266, 276 (1988). Under Fed. R. App. P. 4(c)(1), timely filing may be

shown through a sworn declaration or notarized statement setting forth the date the notice of appeal was deposited in the prison mail and stating that first-class postage had been prepaid. Based upon the unsworn and unnotarized certificate of service, Chambers' notice of appeal could have been filed as early as March 9, 2009, within the ten-day appeal period. However, she mailed it in an envelope postmarked March 16, 2009, which was outside the ten-day appeal period but within the thirty-day excusable neglect period.

Because it is unclear whether Chambers timely filed her notice of appeal or instead filed it within the excusable neglect period, we remand the case to the district court for the court to determine whether Chambers timely filed her notice of appeal and, if not, whether Chambers 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