

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6334

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARRYL JAMES MCGLAMRY,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. James A. Beaty, Jr., Chief District Judge. (2:88-cr-00136-JAB-1)

Submitted: August 19, 2010

Decided: August 27, 2010

Before MOTZ, GREGORY, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Darryl James McGlamry, Appellant Pro Se. Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darryl McGlamry seeks to appeal the district court's order granting the Government's Fed. R. Crim. P. 35 motion, and reducing McGlamry's sentence. In criminal cases decided prior to December 1, 2009, 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. Little, 392 F.3d 671, 680-81 (4th Cir. 2004) (applying Rule 4(b)(1)(A) appeal period to appeal from Rule 35 ruling). 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 on September 14, 2009. The notice of appeal was filed on March 1, 2010.* Because McGlamry failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the appeal. We grant McGlamry's motion to place the informal brief under seal. We dispense with oral argument because the facts and legal

* For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED