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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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Clerk

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June 21, 2007

Clerk, U. S. District Court
Western District of North Carolina at Asheville
Room 309
U. S. Post Office & Courthouse
100 Otis Street
Asheville, NC 28801Re: 07-6223 US v. Aiken
1:04-cr-00092-1

Dear Clerk:

Enclosed is an opinion of this Court remanding the case for limited purpose. The record on appeal is being returned for the district court's use. Please return the record, as supplemented, to this Court after completing the determination on remand.

Yours truly,

PATRICIA S. CONNOR
Clerk/s/ Diane H. Burke
By: _____
Deputy Clerkcc: Jeremy Lujan Aiken
Jill Westmoreland Rose

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6223

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JEREMY LUJAN AIKEN,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Lacy H. Thornburg, District Judge. (1:04-cr-00092-1)

Submitted: June 15, 2007

Decided: June 21, 2007

Before WIDENER, MICHAEL, and KING, Circuit Judges.

Remanded by unpublished per curiam opinion.

Jeremy Lujan Aiken, Appellant Pro Se. Jill Westmoreland Rose, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeremy Lujan Aiken seeks to appeal the district court's order denying his motion to compel a Fed. R. Crim. P. 35(b) motion. 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. Little, 392 F.3d 671, 680-81 (4th Cir. 2004) (applying ten-day 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 January 9, 2007. Aiken filed the notice of appeal on February 15, 2007, after the ten-day period expired but within the thirty-day excusable neglect period. Because the notice of appeal was filed within the excusable neglect period, we remand the case to the district court for the court to determine whether Aiken 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