

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6929

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KANTON TALLEY,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:05-cr-00207-1)

Submitted: October 21, 2008

Decided: October 27, 2008

Before MICHAEL, TRAXLER, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Kanton Talley, Appellant Pro Se. John J. Frail, Assistant United States Attorney, Charleston, West Virginia, Richard Gregory McVey, Assistant United States Attorney, Huntington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kanton Talley seeks to appeal the district court's order granting his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2000). 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 granting the motion for reduction of sentence on May 2, 2008. Talley filed the notice of appeal, at earliest, on May 20, 2008,* 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 Talley has shown excusable neglect or good cause warranting an extension of the

* Because Talley was not then represented by counsel, this filing date is determined pursuant to Houston v. Lack, 487 U.S. 266, 276 (1988).

ten-day appeal period. The record, as supplemented, will then be returned to this court for further consideration. We deny Talley's motion for the appointment of counsel on appeal.

REMANDED