

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7171

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDREW LEWIS PRIVOTT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Jerome B. Friedman, District Judge. (2:02-cr-00090-JBF-FBS-1)

Submitted: November 13, 2008

Decided: November 20, 2008

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Andrew Lewis Privott, Appellant Pro Se. Laura Pellatiro Tayman, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Andrew Privott seeks to appeal the district court's order denying his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006). The Government has moved to dismiss the appeal as untimely. We grant the Government's motion and dismiss Privott's appeal.

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 a § 3582 proceeding is criminal in nature and that 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). "When the government properly objects to the untimeliness of a defendant's criminal appeal, Rule 4(b) is mandatory and inflexible." See United States v. Frias, 521 F.3d 229, 234 (2d Cir.) (citations omitted), cert denied, -- S. Ct. --, 2008 WL 2958966 (Oct. 6, 2008) (No. 08-5572).

The district court entered its order denying the motion for reduction of sentence on March 28, 2008. The notice of appeal was deemed filed on May 23, 2008. See Houston v. Lack, 487 U.S. 266, 276 (1988). Because Privott failed to file

a timely notice of appeal or to obtain an extension of the appeal period, we grant the Government's motion and dismiss the appeal. 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.

DISMISSED