

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7297

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH WAYNE TUCKER, a/k/a Kenneth Nathaniel Tucker, a/k/a
Kenneth N. Tucker,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. Henry E. Hudson, District
Judge. (3:07-cr-00098-HEH-1)

Submitted: January 30, 2009

Decided: February 25, 2009

Before TRAXLER, KING, and GREGORY, Circuit Judges.

Remanded by unpublished per curiam opinion.

Kenneth Wayne Tucker, Appellant Pro Se. Peter Sinclair Duffey,
Assistant United States Attorney, Richmond, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth Wayne Tucker seeks to appeal his conviction and sentence. 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). 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 judgment on June 13, 2008. Tucker filed the notice of appeal on July 24, 2008, after the ten-day appeal 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 Tucker 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