

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8066

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN FOGG,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, Chief District Judge. (3:05-cr-00030-JRS-1)

Submitted: July 30, 2009

Decided: August 3, 2009

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

John Fogg, Appellant Pro Se. Michael Ronald Gill, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Fogg seeks to appeal the district court's orders denying his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006) and denying his subsequent motion for reconsideration. 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 § 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 denying Fogg's motion for reconsideration on July 14, 2008. Fogg's notice of appeal was received by this court on August 5, 2008, after the ten-day period expired but within the thirty-day excusable neglect period. See Fed. R. App. P. 4(d) (addressing notice of appeal mistakenly filed in appellate court). 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 Fogg 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