

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7223

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BROOKS JAMES TERRELL,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Henry M. Herlong, Jr., District Judge. (7:99-cr-00610-HMH)

Submitted: December 12, 2007

Decided: January 4, 2008

Before NIEMEYER, TRAXLER, and KING, Circuit Judges.

Remanded by unpublished per curiam opinion.

Brooks James Terrell, Appellant Pro Se. David Calhoun Stephens, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brooks James Terrell seeks to appeal the district court's order denying his motion for modification 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 of 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 19, 2007; the ten-day appeal period expired on July 3, 2007. Terrell filed a notice of appeal on August 2, 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 Terrell 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