

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4313

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRANDON JAMES PEGUESE, a/k/a Geese,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., Senior District Judge. (6:07-cr-00017-GRA-4)

Submitted: June 23, 2009

Decided: July 15, 2009

Before TRAXLER, Chief Judge, and KING and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

D. Craig Brown, Florence, South Carolina, for Appellant. Alan Lance Crick, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brandon James Peguese seeks to appeal his conviction, pursuant to a guilty plea, on one count of conspiracy to possess with intent to distribute five kilograms or more of cocaine and the resulting sentence of 121 months. The district court entered judgment on November 2, 2007. Peguese filed the notice of appeal, dated December 10, 2007, on March 10, 2008. Because Peguese failed to file a timely notice of appeal¹ and it was unclear whether Peguese delivered his notice to prison authorities during the thirty-day excusable neglect period, we remanded the case to the district court for a determination as to whether the notice was given to prison officials during the excusable neglect period, and if so, whether Peguese had shown excusable neglect or good cause warranting an extension of the time to file a notice of appeal.

Despite an order from the district court directing Peguese to submit a response with the requested information, Peguese failed to respond. The court therefore determined that

¹ 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).

Peguese filed his notice on December 10, 2007,² but failed to demonstrate excusable neglect or good cause. See United States v. Peguese, No. 6:07-cr-00017-GRA-4 (D.S.C. Mar. 6, 2009). The matter is now before this court for final disposition. In light of Peguese's failure to file a timely notice of appeal and the district court's reasonable determination that Peguese failed to demonstrate excusable neglect or good cause for his late appeal, we dismiss the appeal as untimely.

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

² See Houston v. Lack, 487 U.S. 266 (1988).