<u>**UNPUBLISHED**</u>

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8469

UNITED STATES OF AMERICA,

                    Plaintiff - Appellee,

          v.

SHAWN RHONDU SMITHWICK,

                    Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (5:06-cr-00121-F-1; 5:08-cv-00538-F)

Submitted: July 7, 2009   Decided: July 20, 2009

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

Remanded by unpublished per curiam opinion.

Shawn Rhondu Smithwick, Appellant Pro Se. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shawn Rhondu Smithwick seeks to appeal the district court's order denying his 18 U.S.C. § 3582(c)(2) (2006) motion for reduction of sentence. In criminal cases, the defendant must file a notice of appeal within ten days of the entry of the order being appealed. Fed. R. App. P. 4(b)(1)(A); United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000) (holding that § 3582(c)(2) proceeding is criminal in nature and ten-day appeal period applies). With or without a motion, the district court may grant an extension of time to file a notice of appeal of up to thirty days upon a showing of excusable neglect or good cause. 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 Smithwick's § 3582(c)(2) motion on October 17, 2008. The notice of appeal was filed November 20, 2008, 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 limited purpose of determining whether Smithwick 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.

<u>REMANDED</u>