

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7836

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TIMOTHY GRAHAM,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, District Judge. (CR-95-70115; CA-05-227)

Submitted: April 28, 2006

Decided: May 15, 2006

Before NIEMEYER, MICHAEL, and TRAXLER, Circuit Judges.

Remanded by unpublished per curiam opinion.

Timothy Graham, Appellant Pro Se. Thomas Linn Eckert, Assistant United States Attorney, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Timothy Graham seeks to appeal the district court's orders dismissing his 28 U.S.C. § 2255 (2000) motion, entered April 20, 2005, and denying his Fed. R. Civ. P. 59(e) motion, entered May 12, 2005. According Graham the benefit of Fed. R. App. P. 4(c) and Houston v. Lack, 487 U.S. 266 (1988), the earliest date his notice of appeal may be deemed filed is November 15, 2005, beyond both the sixty-day appeal period under Fed. R. App. P. 4(a)(1)(B), and the thirty-day excusable neglect period allowed under Fed. R. App. P. 4(a)(5). See Shah v. Hutto, 722 F.2d 1167, 1168 (4th Cir. 1983); see also Fed. R. App. P. 4(a)(4)(A) (providing that if a party timely files a Rule 59(e) motion, the time to file an appeal runs from the entry of the order disposing of that motion).

We construe Graham's notice of appeal, which alleges that he did not timely receive notice of the denial of his Rule 59(e) motion, as a motion to reopen the time to note an appeal under Fed. R. App. P. 4(a)(6). United States v. Feuer, 236 F.3d 725, 729 & n.7 (D.C. Cir. 2001). Accordingly, we remand the case to the district court for the limited purpose of permitting that court to determine whether Graham can satisfy the requirements for reopening the appeal period set forth in Fed. R. App. P. 4(a)(6). See Ogden v. San Juan County, 32 F.3d 452, 454 (10th Cir. 1994). The

record, as supplemented, will then be returned to this court for further consideration.

REMANDED