

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4895

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LUTHER JOE CYRUS, a/k/a Joe Cyrus,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Terry L. Wooten, District Judge. (4:03-cr-00106)

Submitted: April 23, 2007

Decided: May 18, 2007

Before WILKINSON, WILLIAMS, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John M. Ervin, III, ERVIN LAW FIRM, Darlington, South Carolina, for Appellant. Rose Mary Parham, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Luther Joe Cyrus seeks to appeal his resentencing following this court's remand. See United States v. Cyrus, No. 04-4625, 2005 WL 1220856 (4th Cir. May 24, 2005) (unpublished). 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).

Because the district court entered judgment on March 21, 2006, Cyrus had until April 4, 2006, in which to note a timely appeal. Counsel moved for an extension of time to note an appeal on April 5, 2006. The district court granted the motion for good cause shown on August 16, 2006. However, in accordance with Fed. R. App. P. 4(b)(4), the court lacked authority to extend the appeal period beyond May 4, 2006. Thus, Cyrus's notice of appeal, filed on August 22, 2006, was untimely. Accordingly, we dismiss the appeal.

This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move this court for leave to withdraw

from representation. Counsel's motion must state that a copy thereof was served on the client. 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