

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7216

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROBERT ELTON STOTTS, a/k/a Sugarbear,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (2:95-cr-00049-RBS-7)

Submitted: December 21, 2006

Decided: January 3, 2007

Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Elton Stotts, Appellant Pro Se. Charles Philip Rosenberg, United States Attorney, Alexandria, Virginia; Kevin Michael Comstock, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Elton Stotts appeals the district court's order denying his motion filed under 18 U.S.C. § 3582(c)(2) (2000). In criminal cases, a defendant must file his notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A); United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000) (holding that § 3582 proceeding is criminal in nature and ten-day appeal period applies and collecting cases adopting rule). With or without a motion, the district court may grant an extension of up to thirty days to file a notice of appeal 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). These time periods are mandatory and jurisdictional.

The district court entered its order denying the § 3582(c)(2) motion on May 8, 2006. The ten-day appeal period expired on May 22, 2006. See Fed. R. App. P. 26(a)(2). Stotts filed his notice of appeal, at the earliest, on June 23, 2006—outside both the ten-day appeal period and the thirty-day excusable neglect period, which expired on June 21, 2006. Therefore, Stotts' notice of appeal was not timely filed.

Accordingly, we dismiss the appeal for lack of jurisdiction. 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