

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4911

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LUCIEN CLARKE WATTS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, Chief District Judge. (3:06-cr-00173-JRS)

Submitted: November 21, 2007

Decided: December 21, 2007

Before TRAXLER, KING, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Mark Diamond, Richmond, Virginia, for Appellant. Matthew Childs Ackley, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lucien Clarke Watts seeks to appeal the district court order denying his motion for leave to file his notice of appeal out of time. 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).

The district court entered the order on August 7, 2007. Watts filed the notice of appeal on September 10, 2007, 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 court to determine whether Watts 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.

REMANDED

*The notice of appeal was entered in the district court on September 17, 2007. However, because Watts is a pro se inmate, his notice is deemed filed on the date he gave it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 276 (1988); Fed. R. App. P. 4(c)(1).