

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 07-6554**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SHANE MACK LOWRY,

Defendant - Appellant.

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Appeal from the United States District Court for the Southern District of West Virginia, at Bluefield. David A. Faber, Chief District Judge. (1:02-cr-00003; 1:04-cv-00463)

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Submitted: October 5, 2007

Decided: November 8, 2007

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Before WILKINSON, MOTZ, and GREGORY, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Shane Mack Lowry, Appellant Pro Se. Michael Lee Keller, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, John Lanier File, OFFICE OF THE UNITED STATES ATTORNEY, Beckley, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shane Mack Lowry seeks to appeal the district court's order of May 1, 2006, accepting the recommendation of the magistrate judge and denying relief on his 18 U.S.C. § 3582 (2000) motion. Following the district court's order, Lowry filed a motion for a certificate of appealability on June 6, 2006. Ten months later, the district court construed Lowry's motion as a notice of appeal. Lowry failed to file his motion within the ten-day period in Federal Rule of Appellate Procedure 4(b)(1)(A). However, 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. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985). Lowry filed his motion within the thirty-day excusable neglect period. Accordingly, we remand the case to the district court for the court to determine whether Lowry 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