UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4313

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRANDON JAMES PEGUESE, a/k/a Geese,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., District Judge. (6:07-cr-00017-GRA-4)

Submitted: October 14, 2008 Decided: November 3, 2008

Before TRAXLER, KING, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

D. Craig Brown, Florence, South Carolina, for Appellant. Alan Lance Crick, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brandon James Peguese seeks to appeal his conviction, pursuant to a guilty plea, on one count of conspiracy to possess with intent to distribute five kilograms or more of cocaine and the resulting sentence of 121 months. 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 judgment on November 2, 2007. Peguese filed the notice of appeal on March 10, 2008. Because Peguese is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). The notice of appeal is dated after the ten-day period expired but within the thirty-day excusable neglect period. The record is otherwise ambiguous as to when Peguese gave the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to obtain this information from the parties. If the district court determines that the notice of appeal was given to prison officials during

the excusable neglect period, the court should proceed to determine whether Peguese 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