

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-4527**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AVELINO OSORIO-CORTEZ,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., District Judge. (1:06-cr-00373-NCT-1)

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Submitted: January 15, 2009

Decided: January 21, 2009

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Before MOTZ and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Remanded by unpublished per curiam opinion.

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Lisa S. Costner, LISA S. COSTNER, PA, Winston-Salem, North Carolina, for Appellant. Sandra Jane Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Avelino Osorio-Cortez seeks to appeal his conviction and eighty-seven-month sentence. 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 its judgment on March 19, 2008. Osorio-Cortez filed the notice of appeal at the latest on April 28, 2008, 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 Osorio-Cortez 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