

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7009

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARRON OWENS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Cameron McGowan Currie, District Judge. (5:01-cr-00084-CMC)

Submitted: May 15, 2009

Decided: June 11, 2009

Before MICHAEL, TRAXLER, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Darron Owens, Appellant Pro Se. Stacey Denise Haynes, Assistant United States Attorney, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darron Owens seeks to appeal the district court's order denying his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006). 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); see United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000) (holding § 3582 proceeding is criminal in nature and ten-day appeal period applies). 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 order denying the motion for reduction of sentence on May 20, 2008. Owens filed the notice of appeal on June 12, 2008.* Because Owens failed to file a timely notice of appeal or obtain an extension of the appeal period, we remanded this case to the district court for the court to determine whether Owens could demonstrate excusable neglect or good cause to justify extending the ten-day appeal

* For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

period. In accordance with our remand order, the district court received evidence pertaining to the issue and determined that Owens failed to make the requisite showing.

We have thoroughly reviewed the record and agree that Owens has failed to demonstrate excusable neglect or good cause justifying a relaxation of the ten-day appeal period set forth in Rule 4(b)(1)(A). See generally Bowles v. Russell, 551 U.S. 205, ___, 127 S. Ct. 2360, 2363-66 (2007); United States v. Mitchell, 518 F.3d 740, 750 (10th Cir. 2008). Accordingly, we dismiss the appeal. 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