

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8533

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CURTIS D. DAVIS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Jerome B. Friedman, District Judge. (4:99-cr-00055-JBF-1)

Submitted: February 19, 2009

Decided: February 27, 2009

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Curtis D. Davis, Appellant Pro Se. Timothy Richard Murphy, Special Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Curtis D. Davis seeks to appeal the district court's order denying his motion for reduction of sentence under 18 U.S.C. § 3582 (2006), and its subsequent order denying his motion for reconsideration. 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 that § 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 October 8, 2008. The notice of appeal was filed on November 24, 2008.¹ Because Davis failed to file a timely notice of appeal or to obtain an extension of

¹ 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).

the appeal period, we dismiss the appeal of the district court's order denying Davis' § 3582 motion.²

Turning to the order denying Davis' motion for reconsideration, we have reviewed the record and conclude that the district court did not abuse its discretion in denying the motion. According, we affirm for the reasons stated by the district court. United States v. Davis, No. 4:99-cr-00055-JBF-1 (E.D. Va. Nov. 18, 2008). 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 IN PART AND
AFFIRMED IN PART

² Davis' motion for reconsideration was filed on November 10, 2008, more than ten days after the district court entered its order denying his § 3582 motion, and therefore did not toll the running of the time to file a notice of appeal. United States v. Christy, 3 F.3d 765, 767 n.1 (4th Cir. 1993).