

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8541

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARION AIKEN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Margaret B. Seymour, District Judge. (5:97-cr-01058-MBS)

Submitted: March 13, 2009

Decided: March 26, 2009

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

Dismissed by unpublished per curiam opinion.

Marion Aiken, Appellant Pro Se. James Chris Leventis, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marion Aiken seeks to appeal the district court's order denying his 18 U.S.C. § 3582(c)(2) (2006) motion for reduction of sentence. In criminal cases, a defendant must file his notice of appeal within ten days after the entry of judgment or the order being appealed. Fed. R. App. P. 4(b)(1)(A)(i); see United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000) (holding that a § 3582 proceeding is criminal in nature and ten-day appeal period applies and collecting cases adopting rule). 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 § 3582(c)(2) motion on September 3, 2008. The ten-day appeal period expired on September 17, 2008. Aiken filed his notice of appeal, at the earliest, on December 4, 2008, outside of both the ten-day appeal period and the thirty-day excusable neglect period, which expired on October 17, 2008.* Because Aiken failed

* 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. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988).

to file a timely notice of appeal or to obtain an extension of the appeal period, 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