

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4832

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SAID ASMAR,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Malcolm J. Howard, Senior District Judge. (4:09-cr-00028-H-1)

Submitted: February 24, 2010

Decided: March 25, 2010

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Jeffrey Michael Brandt, ROBINSON & BRANDT, PSC, Covington, Kentucky, for Appellant. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Said Asmar pled guilty pursuant to a plea agreement to illegal structuring of financial transactions, in violation of 31 U.S.C. § 5324(a)(3) and (d) (2006), and was sentenced to sixty-three months in prison. The judgment was imposed on August 11, 2009; however, Asmar did not file a notice of appeal until September 3, 2009. After Asmar filed his appellate brief with this court, the Government filed a motion to dismiss, arguing Asmar had waived his right to appeal in the plea agreement and also that the notice of appeal was not timely filed. In his opposition to the motion, Asmar argues in relevant part that although his notice of appeal was filed outside the prescribed ten-day period, he had requested that the district court grant him an extension to file his notice of appeal. He asks this court to remand the case for the limited purpose of permitting the district court to rule on his motion for extension of time.

Under Fed. R. App. P. 4(b)(4), "the district court may - before or after the time has expired, with or without motion and notice - extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed" by Rule 4(b) for filing the notice. It is clear from the record that Asmar filed his notice of appeal within the applicable period under Rule 4(b)(4). The district

court has not addressed Asmar's request or made a determination as to whether he has shown excusable neglect or good cause warranting an extension of time to file a notice of appeal. Accordingly, we remand the case to the district court so it can determine whether Asmar has made the requisite showing of excusable neglect or good cause. Following this limited remand, the record as supplemented will be returned to this court. We defer ruling on the Government's motion to dismiss pending the limited remand.

REMANDED