

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6675

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGEL MANUEL GONZALEZ,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:05-cr-00007-JPB-JES-3)

Submitted: May 8, 2009

Decided: June 11, 2009

Before TRAXLER, KING, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Angel Manuel Gonzalez, Appellant Pro Se. Paul Thomas Camilletti, Thomas Oliver Mucklow, Assistant United States Attorneys, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Angel Manuel Gonzalez seeks to appeal the district court's order granting 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 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 February 23, 2009. Gonzalez filed the notice of appeal on April 8, 2009,* after the ten-day period expired but on the last day of 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 Gonzalez has shown excusable neglect or good cause warranting an extension of the

* See Houston v. Lack, 487 U.S. 266, 276 (1988).

ten-day appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED