

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7624

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMY LUJAN AIKEN,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Lacy H. Thornburg,
District Judge. (1:04-cr-00092-LHT-1)

Submitted: November 19, 2009

Decided: December 4, 2009

Before MOTZ, GREGORY, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Jeremy Lujan Aiken, Appellant Pro Se. Amy Elizabeth Ray,
Assistant United States Attorney, Asheville, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeremy Lujan Aiken 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 on July 31, 2009. Aiken's notice of appeal was deposited in the prison's internal mail system on August 19, 2009, see Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266, 276 (1988), a date beyond the ten-day appeal period but within 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 Aiken has shown excusable neglect or good cause warranting an extension of the ten-day appeal period.

The record, as supplemented, will then be returned to this court for further consideration.

REMANDED