

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7812

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY ZELAYA, a/k/a Homeboy, a/k/a Jose Manuel Alvarado,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Deborah K. Chasanow, Chief District Judge. (8:05-cr-00393-DKC-19; 8:10-cv-02509-DKC)

Submitted: April 1, 2014

Decided: April 4, 2014

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

Remanded by unpublished per curiam opinion.

Henry Zelaya, Appellant Pro Se. Laura Jean Gwinn, John Alexander Romano, Michael Stephen Warbel, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; William Moomau, OFFICE OF THE UNITED STATES ATTORNEY, James Marton Trusty, Assistant United States Attorney, Greenbelt, Maryland; Marianne Shelvey, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Zelaya seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2012) motion. In civil cases in which the United States or its officer or agency is a party, parties have sixty days after the entry of the district court's final judgment or order to file a notice of appeal. Fed. R. App. P. 4(a)(1)(B). A district court may extend the time to file a notice of appeal upon a party's motion for an extension filed within thirty days after the expiration of the original appeal period and a showing of excusable neglect or good cause warranting an extension. Fed. R. App. P. 4(a)(5)(A); Washington v. Bumgarner, 882 F.2d 899, 900-01 (4th Cir. 1989).

Zelaya's sixty-day appeal period expired on October 22, 2013. Zelaya's notice of appeal was filed, at the earliest, on October 28, 2013, outside the sixty-day appeal period but within the thirty-day excusable neglect period. Because Zelaya indicated that he just learned of the disposition of his § 2255 motion and sought a copy of the district court's order, we construe Zelaya's notice of appeal as a Rule 4(a)(5) motion for extension of time.

Accordingly, we remand this case to the district court for the limited purpose of determining whether Zelaya has demonstrated excusable neglect or good cause warranting an

extension of the appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED