

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-2434

United States of America,

Appellee,

v.

Ronda Jo Due,

Appellant.

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Appeal from the United States
District Court for the
Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: July 6, 2007
Filed: July 12, 2007

Before SMITH, GRUENDER, and SHEPHERD, Circuit Judges.

PER CURIAM.

In this direct criminal appeal, court-appointed counsel for Ronda Jo Due has filed a motion seeking leave to withdraw and a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Due pleaded guilty to a conspiracy charge and was sentenced to 60 months in prison and 3 years of supervised release. The district court¹ entered judgment on May 12, 2006. Due's pro se notice of appeal, dated May 30 and postmarked June 1, was received by the district court on June 2. Even if the notice of appeal is deemed filed on May 30, it was not filed within ten days of entry of

¹The Honorable Susan Webber Wright, United States District Judge for the Eastern District of Arkansas.

judgment and is therefore untimely. See Fed. R. App. P. 4(b)(1)(A)(i). A district court may, however, grant a defendant an additional 30 days in which to file a notice of appeal upon a showing of excusable neglect or good cause. See Fed. R. App. P. 4(b)(4).

Accordingly, counsel's motion is held in abeyance and the case is remanded to the district court to determine whether the time for filing a notice of appeal should be extended under Fed. R. App. P. 4(b)(4). See United States v. Austin, 217 F.3d 595, 597 (8th Cir. 2000); United States v. Petty, 82 F.3d 809, 810 (8th Cir. 1996) (per curiam). Upon making that determination, the district court shall promptly return the case to this court for dismissal or further proceedings, as may be appropriate.
