

FILED
Jun 10, 2021
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

MARCUS WASHINGTON,

Defendant-Appellant.

O R D E R

Before: BATCHELDER, Circuit Judge.

Marcus Washington, proceeding pro se, appeals a district court order denying his construed motion to modify the conditions of his supervised release. The government argues in its appellate brief that the appeal should be dismissed as untimely.

In a criminal case, the defendant must file a notice of appeal no later than fourteen days after the challenged order is entered. Fed. R. App. P. 4(b)(1)(A). A motion to modify the conditions of supervised release under 18 U.S.C. § 3583(e) is part of the criminal proceedings, so the fourteen-day period for filing a notice of appeal applies. *See United States v. Brown*, 817 F.3d 486, 488-89 (6th Cir. 2016) (holding that a motion for a sentence reduction filed under 18 U.S.C. § 3582(c) is a criminal motion subject to the fourteen-day appeal deadline).

The district court entered its order denying Washington's motion for modification of his supervised-release conditions on March 12, 2020. Under Rule 4(b)(1)(A), the time for filing a notice of appeal expired fourteen days later, on March 26, 2020. Washington's notice of appeal was filed on April 22, 2020.

The deadline in Rule 4(b)(1)(A) for a defendant to file a notice of appeal is not jurisdictional. *United States v. Gaytan-Garza*, 652 F.3d 680, 681 (6th Cir. 2011) (per curiam). But the filing deadline is a mandatory claims-processing rule, so when the government raises the

issue of timeliness, as it did here, this court must enforce the deadline. *United States v. Jackson*, 995 F.3d 476, 483 (6th Cir. 2021) (citing *Gaytan-Garza*, 652 F.3d at 681).

When a criminal defendant files a notice of appeal “after the fourteen-day appeal period but within the next thirty days,” the district court should treat the notice of appeal as a request for an extension of time to file an appeal. *United States v. Payton*, 979 F.3d 388, 390 (6th Cir. 2020). The district court may “extend the time to file a notice of appeal for a period not to exceed 30 days,” if it finds “excusable neglect or good cause” to do so. Fed. R. App. P. 4(b)(4).

Because Washington’s notice of appeal was filed after the fourteen-day appeal period set forth in Rule 4(b)(1)(A), but before expiration of the thirty-day period to seek an extension to file an appeal set forth in Rule 4(b)(4), this case is **REMANDED** to the district court for the limited purpose of allowing the district court to determine whether Washington can show excusable neglect or good cause warranting an extension of the appeal period.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk