

NOT RECOMMENDED FOR PUBLICATION

No. 21-5780

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Sep 8, 2022

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	ON APPEAL FROM THE UNITED
v.)	STATES DISTRICT COURT FOR
)	THE EASTERN DISTRICT OF
MARCUS WASHINGTON,)	TENNESSEE
)	
Defendant-Appellant.)	

ORDER

Before: McKEAGUE, STRANCH, and DONALD, Circuit Judges.

Marcus Washington, a pro se prisoner, appeals the district court's denial of his motion for an extension of time to file a notice of appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Washington pleaded guilty to conspiracy to possess with intent to distribute oxycodone and cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846; possession with intent to distribute oxycodone, in violation of § 841(a)(1); and conspiracy to commit commercial sex trafficking, in violation of 18 U.S.C. §§ 1591(a) and 1594(c). He was sentenced to serve concurrent sentences of 120 months in prison for each conviction, followed by three years of supervised release, and ordered to pay \$13,750 in restitution. Washington did not appeal.

Washington was released from prison on March 9, 2020. Two days later, he filed a pleading entitled "Mandamus Pursuant to 60(A)." The district court construed Washington's pleading as a motion to modify the conditions of his supervised release and denied it on March 12, 2020. The time for filing a notice of appeal expired 14 days later, on March 26, 2020. Fed.

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R. App. P. 4(b)(1)(A)(i). Washington filed a notice of appeal on April 22, 2020. On remand, *see United States v. Washington*, No. 20-5436 (6th Cir. June 10, 2021), the district court construed Washington's notice of appeal as a motion for an extension of time to file a notice of appeal and ordered him to show good cause or excusable neglect for an extension of time.

Through counsel, Washington filed a combined response to the district court's order and motion for an extension of time to file a notice of appeal, asserting that his notice of appeal was late due to excusable neglect. He requested an extension of time to file his notice of appeal because his chaotic life caused him to miss the filing deadline. He asserted that he was required to register as a sex offender under Tennessee law and that his sex-offender status severely restricted his housing options. He asserted that he "was forced to live out of motels at his family's expense" and would "have to move from one hotel to another after a few days in order to save money."

The district court denied Washington's motion, finding no excusable neglect. The district court concluded that Washington's account of his purportedly chaotic lifestyle was inconsistent with evidence in the record and conflicted with his probation officer's sworn statements that Washington was living in one residence, not multiple motels, in March 2020, when the district court denied the motion to modify his supervised-release conditions. It noted that Washington presented no evidence to support his contention that he lived in multiple motels when his notice of appeal was due. Even if Washington was constantly moving between motels and intended to argue that he did not receive the order denying his motion, the district court concluded that no excusable neglect to support an extension of time to appeal was shown. It pointed out that Washington was advised to inform the court of any address changes and the consequences of failing to do so, that Washington had informed the court of a change of address in August 2018, and that Washington's mother informed the court of a change of address on his behalf in July 2019. Because the district court did not extend the time for filing Washington's notice of appeal, we dismissed his untimely appeal from the denial of his motion to modify the conditions of his supervised release. *See United States v. Washington*, No. 20-5436 (6th Cir. Dec. 14, 2021).

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Washington filed a timely appeal from the district court's order denying his motion for an extension of time to file an appeal. Washington argues that (1) his mental state and financial situation caused constant address changes that resulted in his late notice of appeal; (2) his mandamus pleading should have been construed as a civil motion rather than a criminal motion so the time for filing an appeal would have been longer; (3) he was not residing in an apartment during the timeframe in question; and (4) good cause exists for his late-filed notice of appeal. Washington moves for appointment of counsel and an injunction prohibiting Tennessee from requiring him to register as a sex offender.

We review for an abuse of discretion a district court order denying a motion to extend the time to file an appeal. *United States v. Hills*, 27 F.4th 1155, 1172 (6th Cir. 2022). "A court abuses its discretion when 'it relies on clearly erroneous findings of fact, improperly applies the law, or employs an erroneous legal standard, or when [the reviewing court is] firmly convinced that the trial court committed a clear error of judgment.'" *United States v. Hall*, 20 F.4th 1085, 1104 (6th Cir. 2022) (alteration in original) (quoting *United States v. Kilpatrick*, 798 F.3d 365, 378 (6th Cir. 2015)).

In a criminal case, the defendant must file a notice of appeal no later than 14 days after entry of the challenged order. Fed. R. App. P. 4(b)(1)(A)(i). A motion to modify conditions of supervised release under 18 U.S.C. § 3583(e)(2) is part of the criminal proceedings, so the 14-day period for filing a notice of appeal applies. See *United States v. Payton*, 979 F.3d 388, 390 (6th Cir. 2020) (noting that a motion for a sentence reduction filed under 18 U.S.C. § 3582(c) is a criminal motion subject to the 14-day appeal deadline). The district court may "extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)" if it finds "excusable neglect or good cause." Fed. R. App. P. 4(b)(4). Excusable neglect "encompasses both simple, faultless omissions to act and omissions caused by carelessness." *United States v. Thompson*, 82 F.3d 700, 702 (6th Cir. 1996). It "is determined by balancing several factors: the danger of prejudice to the other party; the length of the delay and potential impact on the proceedings; the reason for the delay,

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including whether it was within the party's reasonable control; and whether the movant acted in good faith." *Hills*, 27 F.4th at 1172.

The district court did not abuse its discretion in determining that Washington failed to demonstrate excusable neglect and denying his motion for an extension of time to file a notice of appeal. During the time period at issue, March 2020, the record reflects that Washington was residing at one location, not multiple motels. Washington submitted various pleadings to the district court in April and May of 2020, listing the same residential address. And Washington's probation officer stated that Washington was residing at an apartment complex but was evicted in August 2020 and began staying in motels in September of 2020. Washington offered no evidence to refute his probation officer's statements. Moreover, Washington did not assert that he failed to receive the district court's order denying his motion to modify the conditions of his supervised release.

On appeal, Washington argues that his mental state and financial situation caused constant address changes that resulted in his late-filed notice of appeal. He also argues that he was not living in an apartment, and only lived in motels, during the timeframe in question. Washington does not explain his mental state or financial situation and how those issues could have contributed to any excusable neglect. In any event, Washington stated that his family paid for his motel expenses. Moreover, as just discussed, the record does not support Washington's contention that he constantly moved between motels during the timeframe at issue.

Washington also argues that his mandamus pleading should have been treated as a civil motion rather than a criminal motion, so the time for filing an appeal would have been longer. But the district court properly construed Washington's purported mandamus pleading as a motion to modify his supervised-release conditions given the relief it sought, specifically, modification of the conditions of supervised release requiring him to comply with Tennessee sex offender registration requirements that prevented him from residing with his mother. *See Payton*, 979 F.3d at 390; *see also Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004).

Finally, Washington argues, without any explanation, that good cause excuses his untimely notice of appeal. Washington did not argue good cause in his combined response to the

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district court's order and motion for an extension of time to appeal. Consequently, the district court did not address good cause as a reason for Washington's failure to file a timely notice of appeal. Unless exceptional circumstances are present, we will not address issues that were not decided by the district court. *Maldonado v. Nat'l Acme Co.*, 73 F.3d 642, 648 (6th Cir. 1996). No exceptional circumstances are present in Washington's case.

Accordingly, we **DENY** the motions for appointment of counsel and an injunction and **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read 'Deborah S. Hunt', is written over a horizontal line.

Deborah S. Hunt, Clerk