

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 13-20600

v.

HONORABLE PAUL D. BORMAN

FARID FATA,

Defendant.

_____ /

RESPONSE TO DEFENDANT'S
"MOTION THAT FATA'S NOTICE OF APPEAL WAS TIMELY"

On May 5, 2020, Fata moved for compassionate release under 18 U.S.C. § 3582(c)(1)(A), seeking release from prison over three decades early based on the Covid-19 pandemic. (ECF No. 265). On July 10, 2020, this Court denied his motion. (ECF No. 284). On July 30, 2020, Fata filed a *pro se* notice of appeal from the order denying his motion. (ECF No. 289). Fata's notice is dated July 29, 2020, and the envelope is postmarked July 30, 2020. (ECF No. 289).

A notice of appeal in a criminal case must be filed within 14 days of the entry of the order being appealed. Fed. R. App. P. 4(b)(1). In this instance, the order being appealed is the opinion and order entered on July 10, 2020, denying

Fata's motion for compassionate release. Fata's notice of appeal was not even mailed until 19 days later. Therefore, it was late. *United States v. Gaytan-Garza*, 652 F.3d 680, 681 (6th Cir. 2011). Because Fata failed to file a timely notice of appeal, the government filed a Motion to Dismiss his appeal with the United States Court of Appeals for the Sixth Circuit. (Case No. 20-1762; Doc. 10). On October 8, 2020, the Sixth Circuit ruled that the government properly raised the timeliness issue by filing a motion to dismiss. (Case No. 20-1762; Doc. 13-2, pg. 2).

However, because Fata filed a notice of appeal within thirty days, it remanded the case to this Court to determine "whether Fata can show excusable neglect or good cause warranting an extension of the appeal period." (Case No. 20-1762; Doc. 13-2, pg. 2).

On October 23, 2020, this Court received from Fata a pleading entitled, "Motion that Fata's Notice of Appeal was Timely." (ECF No. 293). In summary, Fata's motion asks this Court to deem his appeal timely because he allegedly mailed a letter to the Sixth Circuit on July 16.

Fata's motion to deem his July 16 mailing a timely notice of appeal should be denied for two reasons. First, although the document Fata submits as "Appendix A" appears to show that Fata mailed an envelope to "Clerk, 100 E. 5th Street, Cincinnati, OH 45202" on July 16, 2020, the contents of the envelope have

never appeared anywhere on the docket in the Sixth Circuit. (*See* Case No. 20-1762 and Case No. 20-1713). And, Fata has never submitted to the Sixth Circuit or to this Court a copy of the contents of that envelope. Furthermore, Fata does not submit a declaration of the contents. *See* 28 U.S.C. § 1746 (Unsworn Declarations under Penalty of Perjury); *Olivo-Rosa v. United States*, 373 F.Supp.3d 367, 374 (D. P.R. 2019)(court rejected an undated and unsigned letter, because it was “not an affidavit or an unsworn declaration under penalty of perjury, as provided by 28 U.S.C. § 1746, that would support his claim”); *United States v. Miller*, 666 F.2d 99, 993-94 (5th Cir. 1982) (defendant submitted affidavit of Court Clerk that a notice of appeal was received timely). Notably, Fata is well aware of such declarations, because he submitted one in support of his § 2555 motion. *See* Doc # 212-2 (Exhibit 2: Declaration of Farid Fata).

Fata asks this Court to rely on his word that the July 16 envelope contained a Notice of Appeal. Fata’s mere words are not entitled to such deference and reliance given his lengthy history of pathological lying to his patients, other medical professionals, insurance companies, and to the government and in light of his lies throughout his post-conviction proceedings.

As this Court will recall, Fata was caught trying to forge evidence during his § 2255 proceedings (ECF No. 276, PageID.4409-4411: Order Denying

Defendant's Motion Pursuant to 28 U.S.C. § 2255; ECF No. 258, PageID.3850, 3877-3880: Report and Recommendation to Deny Defendant's Motion under 28 U.S.C. § 2255) and during his compassionate release proceedings (ECF No. 272, PageID.4033: Exhibit 7 (5/14/20 Letter from Penny Parker, Esq.); Exhibit 8 (5/13/20 Letter from Penny Parker, Esq.)(filed under seal). The lie in his compassionate release motion and the repeated lies during his § 2255 proceedings were not the first lies by Fata during his prosecution, *see* Government's Supplemental Brief (ECF No. 244, PageID.3478-3479), and they are demonstrative of Fata's total lack of credibility and willingness to deceive (or attempt to deceive) this Court for his own benefit.

Absent credible evidence to the contrary, Fata's mere representation and self-serving assertion should not be believed given that Fata's legal submissions and testimony in the courtroom during his post-conviction proceedings have been riddled with lies and deception. It is Fata's burden to reliably show that he submitted a notice of appeal in that envelope and he has failed to meet his burden. This Court should not believe his assertions and representations with his track record of lying to his patients, other medical professionals, insurance companies, the government, and the Court.

Fata's motion should also be denied for a second reason. A district court may

extend the 14-day deadline by thirty days if it makes “a finding of excusable neglect or good cause.” Fed. R. App. P. 4(b)(4). Importantly, “the appellant must establish the existence of one of those conditions.” *United States v. Douglas*, 746 F. App’x 465, 467 (6th Cir. 2018) (citing *United States v. Thompson*, 82 F.3d 700, 702 (6th Cir. 1996)). To show good cause for his tardiness, Fata must “establish that forces beyond his control ‘prevented [him] from filing a timely notice of appeal.’” *Douglas*, 746 F. App’x at 467 (quoting *Nicholson v. City of Warren*, 467 F.3d 525, 526 (6th Cir. 2006)). “More important, when a moving party contends that a circumstance outside his control prevented him from filing a timely notice of appeal, he must provide details about that prohibitive circumstance.” *Douglas*, 746 F. App’x at 467 (citing *Nicholson*, 467 F.3d at 526).

District courts are not permitted to “carte blanche” grant motions for extensions of time under Rule 4 of the Federal Rules of Appellate Procedure. *United States v. Thompson*, 82 F.3d 700, 702 (6th Cir. 1996). “Although the standard is not impossible to satisfy, ‘excusable neglect’ has been reserved for ‘extraordinary cases.’” *United States v. Alqsous*, 2020 WL 409325 at *2 (N.D. Ohio, Jan. 24, 2020) (citing *Proctor v. N. Lakes Cmty. Mental Health*, 560 F. App’x 453, 458 (6th Cir. 2004))(quoting *Nicholson*, 467 F.3d at 526). If no excusable neglect is shown, the extension cannot be granted. However, if the

district court finds excusable neglect, the court must then examine the questions of prejudice and bad faith. *Thompson*, 82 F.3d at 702. “If there is any indication of bad faith or any evidence of prejudice to the appellee or to judicial administration, the district court may then choose to exercise its discretion and deny the requested extension.” *Thompson*, 82 F.3d at 702.

Fata has not offered a single basis for finding good cause or excusable neglect for failing to submit a notice of appeal within 14 days. Notably, Fata has timely appealed to the Sixth Circuit on several occasions including following his guilty plea and following the denial of his § 2255 motion. In this only instance when his notice of appeal is late, he provides no excuse such as incapacitation, mistaken understanding of the deadline, or clear direction to counsel that was not followed. Instead, he only presents a circular argument with no substance: because he mailed something on July 16, he has established excusable neglect. Such a circular argument cannot establish excusable neglect. *See, e.g., Williams v. Meyer*, 346 F.3d 607, 613-14 (6th Cir. 2003) (“Williams cited a number of reasons for needing additional time, including illness, preexisting professional obligations, the Supreme Court’s grant of *certiorari* [in another case] . . . the complexity of the issues, the magnitude of the record, and the magistrate’s reliance on caselaw from other jurisdictions. All of these events were mostly or entirely beyond counsel’s

control, and there is no evidence that any of the claimed reasons were false or frivolous.”); *Merriweather v. Wilkinson*, 83 F. App’x 62, 63-64 (6th Cir. 2003) (prisoner’s *pro se* status and lack of legal training did not amount to excusable neglect for failing to timely file objections to a Report and Recommendation and for failing to timely file a notice of appeal from the district court’s judgment adopting the Report and Recommendation).

Finally, even if evidence of good cause or excusable neglect were presented by Fata, this Court should exercise its discretion and deny the requested extension. Because of the total absence of any legal or factual justification for compassionate release, allowing Fata, who has no compassion, to further pursue compassionate release would result in prejudice to judicial administration and the administration of justice. *See Thompson*, 82 F.3d at 702.

For the reasons set forth above, Fata’s notice of appeal should be deemed untimely and his motion should be denied.

Respectfully submitted,

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Date: November 23, 2020

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF system.

I further certify that a copy of the foregoing document was mailed by U.S. mail to the following non-ECF participant:

Farid Fata, #48860-039
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

Dated: November 23, 2020

s/Sarah Resnick Cohen
SARAH RESNICK COHEN
Assistant U.S. Attorney