

No. 20-1762

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 FARID FATA,)
)
 Defendant-Appellant.)
)

FILED
Oct 08, 2020
DEBORAH S. HUNT, Clerk

ORDER

Before: DONALD, Circuit Judge.

Farid Fata appeals from the district court’s order denying his motion for compassionate release or a reduction of his sentence under 18 U.S.C. § 3582(c)(1)(A). The government moves to dismiss the appeal as untimely.

In a criminal case, the defendant must file the notice of appeal in the district court no later than fourteen days after the challenged order is entered. Fed. R. App. P. 4(b)(1)(A). A § 3582(c) motion is considered to be a continuation of the criminal proceedings, and, accordingly, the fourteen-day period for filing a notice of appeal applies. *See United States v. Brown*, 817 F.3d 486, 488 (6th Cir. 2016).

Here, the district court entered its order denying the motion for compassionate release or a reduction of Fata’s sentence on July 10, 2020. Under Rule 4(b)(1)(A), the fourteen-day deadline for filing a notice of appeal as to that order expired on July 24, 2020. Fata’s notice of appeal, dated July 29, 2020, was filed in the district court on July 30, 2020.

Unlike in a civil case, the deadline in Rule 4(b)(1)(A) for a defendant to file a notice of appeal is not jurisdictional. *See Brown*, 817 F.3d at 489; *United States v. Gaytan-Garza*, 652 F.3d

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680, 681 (6th Cir. 2011) (per curiam). But the filing deadline is a mandatory claims-processing rule, so if the government raises the issue of timeliness, we must enforce the deadline. *See Brown*, 817 F.3d at 489; *Gaytan-Garza*, 652 F.3d at 681. The government has properly raised the timeliness issue by filing a motion to dismiss.

Rule 4(b)(4) authorizes the district court, upon a motion, to extend the time in which a party may appeal for up to thirty days from the end of the fourteen-day appeal period provided in Rule 4(b)(1)(A). However, the court must find “good cause” or “excusable neglect” for the failure to timely file a notice of appeal.

The Second Circuit has held that if a criminal defendant files a notice of appeal after the expiration of the appeal period provided for in Rule 4(b)(1)(A), but before the end of the additional thirty-day period, “the district court should treat the notice of appeal as a request for an extension” of time to file. *United States v. Batista*, 22 F.3d 492, 493 (2d Cir. 1994) (per curiam). The Second Circuit based its holding on the following: first, unlike Rule 4(a)(5), which pertains to requests for extensions of time to file notices of appeal in civil cases, Rule 4(b)(4) “does not require formal motion practice,” and second, the belatedly filed notice of appeal, while not explicitly requesting an extension, “indicates to the district court the defendant’s intention and desire to appeal.” *Id.* “[I]n this context the only practical difference between a formal motion and a notice of appeal is that the latter normally will not contain a proffer of excusable neglect. Allowing the district court to receive that proffer at a later point does no violence to either the letter or spirit of Rule 4(b).” *Id.* The Second Circuit’s analysis, which, as it noted, accords with that of other circuits, is persuasive. *See also, e.g., United States v. Espinosa-Talamantes*, 319 F.3d 1245, 1246-47 (10th Cir. 2003) (holding that appropriate remedy is to remand to determine whether the requisite showing for a thirty-day extension can be made).

Because Fata’s notice of appeal was filed after the fourteen-day appeal period but within the next thirty days, we **REMAND** the case to the district court for the limited purpose of allowing the court to determine whether Fata can show excusable neglect or good cause warranting an extension of the appeal period. Following this limited remand, the record as supplemented will be

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returned to this court for further consideration. We defer ruling on the government's motion to dismiss pending the limited remand.

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