

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES,

Plaintiff,

v.

District Court No. 13-cr-20600
District Judge Paul D. Borman

FARID FATA,

Sixth Circuit Court of Appeals No.
20-1762

Defendant. _____/

**ORDER RESPONDING TO SIXTH CIRCUIT REMAND TO THE
DISTRICT COURT TO DETERMINE WHETHER DEFENDANT FATA
CAN SHOW "EXCUSABLE NEGLIGENCE" OR "GOOD CAUSE"
WARRANTING AN EXTENSION OF TIME FROM THE FED. R. APP. P.
4(b)(1)(A) 14-DAY DEADLINE FOR FILING A NOTICE OF APPEAL
FROM THE DISTRICT COURT'S DENIAL ON JULY 10, 2020 OF HIS
MOTION FOR COMPASSIONATE RELEASE OR A REDUCTION OF HIS
SENTENCE**

The United States Court of Appeals for the Sixth Circuit Remand Order (Case No. 20-1762, document 13-2, 10/8/2020) notes that this District Court entered its Order Denying Petitioner's Request for Compassionate Release or Reduction of Sentence on July 10, 2020. (District Court Order, ECF No. 289, PageID 4471.) Defendant filed his Notice of Appeal with this Court on July 30, 2020.

Federal Rule of Appellate Procedure 4(b), Appeal in a Criminal Case, states that a defendant's notice of appeal must be filed in the District Court within 14 days after entry of Judgment. (4(b)(1)(A)(i).)

The Sixth Circuit Remand Order notes that "The Government has properly raised the timeliness issue by filing a Motion to Dismiss" Defendant Fata's appeal. (Doc.: 13-2, at p. 2.) That Remand Order also notes that Fed. R. App. P. 4(b)(4) authorizes the District Court to extend the 14-day limit for up to 30 days from the end of the 14-day appeal period, if it finds "good cause" or "excusable neglect" for the Defendant's failure to file a timely notice of appeal. (*Id.*)

The Sixth Circuit remanded the case "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." (*Id.*)

After the Sixth Circuit's Order of Remand, the following documents were filed by the parties in the District Court.

- #1. Fata: "Motion that Fata's Notice of Appeal was Timely." (ECF No. 293, 10/23/2020.)
- #2. Government: Response to Defendant's Motion. (ECF No. 296, 11/23/2020.)
- #3. Fata: Declaration. (ECF No. 298, 12/01/2020.)

These three documents are attached to this Court's Order.

DISCUSSION OF ##1, 2, AND 3

#1. Fata's "Motion" attaches communications and documents relating to a Notice of Appeal that he alleges he sent by certified mail to the Sixth Circuit on July 16, 2020. Fata also attaches documents from the mail room at FCI-

Williamsburg that he asserts support his right to appeal pursuant to Fed. R. App. P. 4(c)(1) that provides that if an inmate files a notice, the notice is timely if it is deposited in the institution's internal mail room by the last day for filing, and it is accompanied with a postmark or stamp showing that it was so deposited and that postage was prepaid. This Court did not receive that Notice.

Fata's "Motion" also asserts that the Sixth Circuit Order of Remand did not refer to the evidence that he filed in the Sixth Circuit: that on July 16, 2020, he sent a Notice of Appeal to the Sixth Circuit via certified mail.

Fata concludes that "even if this Court does not take into consideration the enclosed evidence mailed to the Sixth Circuit on July 16, 2020, it should treat the Notice of Appeal sent after the 14-day period but before the 30-day window to the District Court as request for the extension." This Court will not consider that request for an extension in responding to the limited remand order: to determine whether Fata can show excusable neglect or good cause warranting an extension of the appeal period.

#2. The Government Response (ECF No. 296) asserts that Fata's untimely Motion should be denied because, despite his claim on page 4 of his "Motion" that he mailed an envelope to the Sixth Circuit on July 16, 2020, the contents of the envelope have never appeared anywhere on the docket in the Sixth Circuit. (20-1762 and 20-1713.) And Fata has never submitted to the Sixth Circuit or to this

Court a copy of the contents of that envelope. Nor does Fata "submit a declaration of the contents. *See* 28 U.S.C. § 1746." (*Id.* at PageID 296.) The Government adds: "Notably, Fata is well aware of such declarations because he submitted one with his § 2255 Motion. *See* Doc. No. 212-2." (*Id.* at PageID 296.)

The Government notes that 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." (*Id.* at PageID 4501.)

The Government asserts that Fata's Motion should be denied for a second reason: because he has not provided the Court with a basis for finding excusable neglect or good cause. (*Id.* at PageID 4502.) "Notably, Fata has timely appealed to the Sixth Circuit on several occasions and provides no excuse such as incapacitation, misunderstanding of the deadline, or clear direction to counsel that was not followed." (*Id.* at PageID 4503.)

#3. Fata's Declaration filed on December 1, 2020 (ECF No. 298), asserts that notice of appeal requests don't appear on the Sixth Circuit docket as they are sent to the District Court:

Per Case Manager Ryan Orme at the Sixth Circuit the "notice of appeal requests" do not show or appear on the docket, that they are sent to the District Court.

(Declaration of Farid Fata, ECF No. 298, PageID 4511.) Fata's Declaration (ECF No. 298) refers back to his claimed "Notice of Appeal" sent to the Sixth Circuit,

post-stamped on July 16, 2020, delivered on July 27, 2020, and provides four pages from the Sixth Circuit General Docket in his case: #20-1762. (*Id.* at PageID 4513-4517.) This Court is unable to determine from those Fata-submitted docket pages, if the Sixth Circuit received an envelope, whether it contained an "appeal notice," and the specific date.

CONCLUSION

The District Court's review of the filings on its docket, and the party's post-remand submissions, lead the Court to conclude that Defendant Fata's Notice of Appeal in this Court was not timely pursuant to Fed. R. App. P. 4 (b)(1)(A), and that there was no valid showing of excusable neglect or good cause by Defendant warranting an extension of the appeal period.

SO ORDERED.

DATED: January 6, 2021

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE