

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL DEAN WHEELER JR.,

Defendant - Appellant.

No. 07-8089

(D.C. No. 2:06-CR-00116-ABJ)

(D. of Wyoming)

ORDER

Before **TACHA, KELLY**, and **HOLMES**, Circuit Judges.

This matter is before the court on the government's motion to dismiss because the notice of appeal is untimely. Upon consideration thereof, the motion is granted.

The defendant filed a notice of appeal forty-one days after entry of judgment. Under Fed. R. App. P. 4(b)(1) the notice was due 10 days after entry of judgment.

Although a timely notice of appeal in a criminal case is not jurisdictional, *see United States v. Garduno*, 506 F.3d 1287, 1290-91 (10th Cir. 2007), where "the government timely object[s] to [the defendant's] late notice of appeal, this court is bound to dismiss the appeal." *Id.* at 1292.

Accordingly, this appeal is **DISMISSED**. This order shall stand as and for the mandate of this court.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney