

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 30, 2014

Elisabeth A. Shumaker  
Clerk of Court

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NATHANIEL AUGUSTUS SMITH, III,

Defendant - Appellant.

No. 14-1254  
(D.C. No. 1:08-CR-00287-REB-6)

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**ORDER**

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Before **BRISCOE**, Chief Judge, **HOLMES**, and **PHILLIPS**, Circuit Judges.

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Defendant Nathaniel Augustus Smith, III, appeals the district court's judgment of conviction and sentence. The notice of appeal was filed nearly a year after the filing deadline passed, however. As a result, the appeal is dismissed as untimely.

In a criminal case, a notice of appeal must be filed within 14 days after entry of judgment. Fed. R. App. P. 4(b)(1)(A)(i). Here, the district court's amended judgment of conviction was entered on June 19, 2013. The notice of appeal should have been filed by July 3, 2013. The notice of appeal was not filed until June 27, 2014, long after the 14-day deadline to file the notice of appeal passed.

The timeliness requirement of Rule 4(b)(1)(A) is an inflexible claim processing rule rather than a jurisdictional limitation. United States v. Garduño, 506 F.3d 1287, 1290-91 (10th Cir. 2007). Although the government must ordinarily invoke Rule 4(b) to

enforce the time limitation, the court may raise Rule 4(b) *sua sponte* when judicial resources and administration are implicated or the delay in taking the appeal has been inordinate. United States v. Mitchell, 518 F.3d 740, 750 (10th Cir. 2008). We find that the delay in filing an appeal in this case has been inordinate and therefore raise the issue of timeliness *sua sponte*.

In sum, because the notice of appeal was filed nearly a year after the deadline expired, we *sua sponte* dismiss the appeal as untimely.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith  
Counsel to the Clerk