

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 12, 2014

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL D. ROBINSON,

Defendant - Appellant.

No. 14-3003
(D.C. No. 2:11-CR-20134-KHV-1)

ORDER

Before **KELLY, HARTZ, and O'BRIEN**, Circuit Judges.

This matter is before us on the government's "Motion to Dismiss Appeal." The government seeks to dismiss this direct criminal appeal, filed *pro se* by the defendant Michael D. Robinson, on timeliness grounds. Defense counsel does not object to the motion. The defendant himself has not filed a response to the motion.

In a criminal case, the notice of appeal must be filed in the district court within 14 days after entry of the judgment. Fed. R. App. P. 4(b)(1). Although the district court may grant an extension of time for filing the notice of appeal, this extension may not exceed 30 days from the original deadline for filing the notice of appeal. *See* Fed. R. App. P. 4(b)(4).

In the instant case, the district court entered judgment against Mr. Robinson on June 13, 2013, making the notice of appeal due no later than June 27, 2013. Mr.

Robinson filed his notice of appeal on January 8, 2014, well beyond the deadline for filing an appeal.

The timely filing of a notice of appeal by the defendant in a criminal case is an inflexible claim-processing rule that may be forfeited if not properly raised by the government. *United States v. Garduño*, 506 F.3d 1287, 1290-91 (10th Cir. 2007). If properly raised, however, we must grant relief. *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir 2008) (citing *Garduño*, 506 F.3d at 1290-91). Because the government has properly invoked the time bar in Rule 4(b), and we agree that the notice of appeal was untimely, the government's motion to dismiss this appeal is granted. Appeal dismissed.

A copy of this order shall stand as and for the mandate of the court.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk