

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 22, 2014

Elisabeth A. Shumaker  
Clerk of Court

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO BELTRAN, a/k/a Mariano  
Sepulveda,

Defendant - Appellant.

No. 14-5067  
(D.C. No. 4:13-CR-00181-GKF-1)

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**ORDER**

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Before **TYMKOVICH**, **BACHARACH**, and **PHILLIPS**, Circuit Judges.

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This matter is before us on *Appellee's Motion to Dismiss the Appeal* and *Appellant Counsel's Response to Appellee's Motion to Dismiss the Appeal*. The government seeks to dismiss this direct criminal appeal, filed *pro se* by the defendant, Mario Beltran, on timeliness grounds. Mr. Beltran's court-appointed counsel has filed a response to the government's motion describing the district court proceedings following Mr. Beltran's conviction and sentence.

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). The timely filing of a notice of appeal by the defendant 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).

In the instant case, the district court entered judgment against Mr. Beltran on January 16, 2014, making the notice of appeal due no later than January 30, 2014. Mr. Beltran did not file a notice of appeal but he did send the district court a letter, which was postmarked January 31, 2014, requesting the appointment of substitute counsel for his appeal. The district court construed this letter, in part, as a motion for an extension of time to appeal, but found the motion moot when Mr. Beltran later stated that he did not wish to appeal. On June 11, 2014, Mr. Beltran filed his notice of appeal.

The notice of appeal was filed well beyond the time to appeal. 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