

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 3, 2014

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FIDENCIO CASTILLO-DELGADO,

Defendant - Appellant.

No. 14-6003
(D.C. No. 5:11-CR-00233-HE-1)

ORDER

Before **KELLY, LUCERO**, and **PHILLIPS**, Circuit Judges.

Defendant, proceeding *pro se*, appeals the judgment entered in his criminal case by the district court on April 19, 2012. Defendant filed his notice of appeal on December 30, 2013, stating that his defense counsel failed to appeal on his behalf.

In a criminal case, a defendant's 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)(A). 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). However, because Rule 4(b) implicates important judicial interests beyond those of the parties, the court may raise the time bar *sua sponte* in certain circumstances. *United States v. Mitchell*, 518 F.3d 740, 750 (10th Cir 2008).

This power is limited and should not be invoked unless judicial resources and administration are implicated and the delay has been inordinate. *Id.*

Under the circumstances of this case, dismissal of this appeal as untimely is appropriate. *Cf. United States v. Galloway*, 56 F.3d 1239, 1240-41 (10th Cir. 1995) (holding that ineffective assistance of counsel claims should be brought in collateral proceedings, not on direct appeal). Defendant's notice of appeal, filed more than one year and eight months after judgment was entered, was inordinately late. Accordingly, this appeal is 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