

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13572

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TIMOTHY ALLEN PHILLIPS,

Defendant- Appellant.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:20-cr-00038-AKK-JHE-1

Before JILL PRYOR, NEWSOM, and LUCK, Circuit Judges.

PER CURIAM:

The government’s motion to dismiss this appeal as untimely is GRANTED. Timothy Phillips’s October 21, 2022 notice of appeal is untimely to challenge the final criminal judgment and sentence entered on November 3, 2021. *See* Fed. R. App. P. 4(b)(1)(A) (providing that in criminal cases, a defendant’s notice of appeal must be filed within 14 days after the entry of the judgment or order being appealed); *United States v. Lopez*, 562 F.3d 1309, 1313-14 (11th Cir. 2009) (holding that we must apply Rule 4(b)’s 14-day time limit when the government objects to an untimely notice of appeal).

While Phillips argues that the government forfeited a timeliness objection by failing to raise it sooner, the government may object to timeliness “for the first time” in its response brief. *See Lopez*, 562 F.3d at 1313. Here, the government has not yet filed its response brief, and it filed its motion before the deadline for that brief. Accordingly, this appeal is DISMISSED.¹

¹ Phillips’s alternative request for appointment of counsel in seeking relief under 28 U.S.C. § 2255 is DENIED without prejudice to him seeking such relief in the district court.