

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10260

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JERMAINE CARL CURTIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 1:17-cr-00026-AW-GRJ-1

Before GRANT, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

On November 21, 2022, Jermaine Carl Curtis, a *pro se* federal prisoner, moved for compassionate release pursuant to the First Step Act or a reduction of his sentence under 18 U.S.C. § 3582(c)(1)(B). The district court denied the motion the next day, on November 22, 2022. On January 17, 2021, 56 days after the district court denied his motion, Curtis delivered to prison officials for mailing a notice of appeal designating the district court's November 22 order.

On appeal, the government argues that the case must be dismissed because Curtis's notice of appeal is untimely filed pursuant to Federal Rule of Appellate Procedure 4(b). Curtis contends we should employ equitable tolling and deem his notice of appeal as timely filed due to extraordinary circumstances.

A motion under 18 U.S.C. § 3582(c)(2) is criminal in nature. *United States v. Fair*, 326 F.3d 1317, 1318 (11th Cir. 2003). In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the entry of the judgment or order being appealed. Fed. R. App. P. 4(b)(1)(A)(i). Rule 4(b)(4) authorizes the district court to grant a 30-day extension of the 14-day deadline in a criminal case based on a finding of good cause or excusable neglect. Fed. R. App. P. 4(b)(4). A *pro se* prisoner's notice of appeal is deemed filed on the date he delivers it to prison officials for mailing. Fed. R. Civ. P. 4(c)(1); *Daniels v. United States*, 809 F.3d 588,

589 (11th Cir. 2015). Absent evidence to the contrary, we assume an inmate delivered his filing to prison officials on the date he signed the filing. *Daniels*, 809 F.3d at 589.

The deadline in Rule 4(b) for a defendant to file a notice of appeal in a criminal case is not jurisdictional but is instead a claims-processing rule. *United States v. Lopez*, 562 F.3d 1309, 1313 (11th Cir. 2009). As a result, the government can waive its objection to an untimely notice of appeal in a criminal case. *Id.* at 1312-13. Nevertheless, if the government raises the issue of timeliness in its responsive brief, then we “*must* apply the time limits of Rule 4(b).” *Id.* at 1313-14 (emphasis added). Here, the government has raised the issue of timeliness in its first merits brief, meaning we must strictly apply Rule 4(b)’s filing deadline requirement. *Id.* Because we must apply the time limits of Rule 4(b), we cannot entertain Curtis’s argument that he is entitled to equitable tolling of the Rule 4(b) deadline. See *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714 (2019) (holding that the 14-day appeal deadline for seeking an interlocutory appeal from an order respecting class certification under Fed. R. Civ. P. 23(f) was “mandatory” and not subject to an “equitable approach” in the form of equitable tolling); see also *Manrique v. United States*, 137 S. Ct. 1266, 1271 (2017) (holding that the filing of “a timely notice of appeal . . . is at least a mandatory claim-processing rule”).

Curtis’s notice of appeal, deemed filed on January 17, 2023, was untimely to appeal from the district court’s order denying his motion, which was entered on November 22, 2022, 56 days earlier.

Fed. R. App. P. 4(b)(1)(A). This was well beyond the 14-day period outlined in Rule 4(b)(1)(A)(i). Furthermore, Curtis was not eligible for relief under Rule 4(b)(4) because his filing was also beyond the additional 30 days during which an extension was permissible. Fed. R. App. P. 4(b)(4). Finally, because the time limit in Rule 4(b) is mandatory, it is not subject to equitable tolling or waiver based on an exceptional circumstance, so we will not consider Curtis's argument in that respect. Accordingly, we **DISMISS** this appeal as untimely.