

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12798

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NICHOLAS WUKOSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:18-cr-80166-DMM-1

Before ROSENBAUM, LUCK, and ABUDU, Circuit Judges.

PER CURIAM:

Nicholas Wukoson appeals, *pro se*, following the denials of his “Motion for Plain Error Review, Rule 52(b)” and motion for reconsideration, which he filed in his closed criminal case. In response, the government moved for summary affirmance, or, alternatively, to dismiss the appeal as untimely. Because the government has raised the issue of timeliness in its motion to dismiss or for summary affirmance, we must apply the time limits of Federal Rule of Appellate Procedure 4(b). *See United States v. Lopez*, 562 F.3d 1309, 1312-14 (11th Cir. 2009) (explaining that the deadline in Rule 4(b) for a defendant to file a notice of appeal in a criminal case is not jurisdictional, but rather it is considered a claims-processing rule).

Wukoson’s present notice of appeal was dated on August 22, 2023, so under the prison “mailbox” rule, it was deemed to be delivered to prison officials and filed with the court then, 145 days after the district court’s March 30, 2023, order. Fed. R. App. P. 4(b)(1)(A). This was well beyond the 14-day period for appealing and, furthermore, Wukoson was not eligible for relief under Rule 4(b)(4) because it was also beyond the additional 30 days during which an extension was permissible. *See Lopez*, 562 F.3d at 1314 (noting that Rule 4(b)(4) allowed the district court to extend the time for filing a notice of appeal by no more than 30 days after the initial deadline).

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Accordingly, we **GRANT** the government's motion to dismiss this appeal as untimely, and we **DENY AS MOOT** the government's motion for summary affirmance.