

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12653
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NACOE RAY BROWN,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cr-00133-PGB-LHP-1

Before JORDAN, NEWSOM, and BRASHER, Circuit Judges.

PER CURIAM:

Nacoe Ray Brown, a federal prisoner, appeals pro se from the district court's order denying his motion to file an out-of-time notice of appeal from the district court's order denying his motion

for a sentence reduction under 18 U.S.C. § 3582(c)(2) based on a retroactive amendment to the Sentencing Guidelines. On appeal, Mr. Brown argues that the district court erred by denying his § 3582(c)(2) motion. The government moves for summary affirmance of the district court's order and to stay the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1161–62 (5th Cir. 1969). A motion for summary affirmance or summary reversal postpones the due date for the filing of any remaining brief until we rule on the motion. *See* 11th Cir. R. 31-1(c).

We review for abuse of discretion the district court's denial of a Federal Rule of Appellate Procedure 4(b)(4) motion to extend the time for filing an appeal. *See Dismuke v. United States*, 864 F.2d 106, 107 (11th Cir. 1989). A post-judgment motion under § 3582(c)(2) is criminal in nature. *See United States v. Fair*, 326 F.3d 1317, 1318 (11th Cir. 2003). Under Fed. R. App. P. 4(b)(1)(A)(i), a criminal defendant must file a notice of appeal within 14 days after the entry of the judgment or order being appealed. The district court may extend the time limits in Rule 4(b) upon a finding of excusable neglect or good cause, for a period not to exceed 30 days from the expiration of the initial appeal period. *See* Fed. R. App. P.

4(b)(4). The time limit in Rule 4(b) is not jurisdictional. *See United States v. Lopez*, 562 F.3d 1309, 1313 (11th Cir. 2009). If the government raises the issue of timeliness, however, “we must apply the time limits of Rule 4(b).” *Id.* at 1314.

We liberally construe *pro se* pleadings. *See United States v. Cordero*, 7 F.4th 1058, 1068 n.11 (11th Cir. 2021). An argument must be “plainly and prominently” raised on appeal for us to not consider it abandoned. *See United States v. Corbett*, 921 F.3d 1032, 1043 (11th Cir. 2019) (quoting *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681–82 (11th Cir. 2014)) (internal quotation marks omitted); *see also Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (recognizing that “issues not briefed on appeal by a *pro se* litigant are deemed abandoned”).

Here, the government is entitled to summary affirmance, as it is clearly correct that Mr. Brown has abandoned any argument challenging the district court’s order denying his motion to file an out-of-time notice of appeal by not addressing it in his initial brief. *See Groendyke Transp., Inc.*, 406 F.2d at 1161–62; *Corbett*, 921 F.3d at 1043. Based on his notice of appeal, Brown appealed from the district court’s order denying his motion to file an out-of-time appeal from the denial of his § 3582(c)(2) motion. But even liberally construing his *pro se* brief, he does not raise any challenge to that order, as he fails to mention his motion to file an out-of-time appeal or the district court’s order denying that motion. *See Cordero*, 7 F.4th at 1068 n.11. Instead, he exclusively argues the merits of his

prior § 3582(c)(2) motion and the order denying it, which was not the order that he appealed.

Accordingly, because the government's position is clearly correct as a matter of law, we **GRANT** the government's motion for summary affirmance and **DENY** as moot its motion to stay the briefing schedule. *Groendyke Transp., Inc.*, 406 F.2d at 1162.

AFFIRMED.