

No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

Adrian Hyman,
Petitioner,

v.

United States of America,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

APPENDIX

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Appendix A

ON REHEARING**PUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4771

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

ADRIAN DEMOND HYMAN,

Defendant – Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:15-cr-00311-LCB-1)

Argued: October 24, 2017

Decided: March 9, 2018

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Motion to dismiss granted by published opinion. Judge Agee wrote the opinion, in which Judge Wilkinson and Judge Duncan joined.

ARGUED: Sarah Marie Powell, DUKE UNIVERSITY SCHOOL OF LAW, Durham, North Carolina, for Appellant. Vijay Shanker, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:** Kenneth A. Blanco, Acting Assistant Attorney General, Trevor N. McFadden, Deputy Assistant Attorney General, Appellate Section, Criminal Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Sandra J. Hairston, Acting United States Attorney, Kyle David Pousson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

AGEE, Circuit Judge:

Adrian Demond Hyman filed his notice of appeal late in violation of the Federal Rules of Appellate Procedure. In response, the Government filed a motion to dismiss the appeal due to his failure to meet the requirement for timely filing. Hyman contends the Government was tardy in filing the motion to dismiss and that delay effectively cures any failure to observe the requirements of the Rules on his part. For the reasons discussed below, we find Hyman's argument to be without merit and grant the Government's motion to dismiss the appeal.

I.

Hyman pleaded guilty in the United States District Court for the Middle District of North Carolina to one count of distribution of cocaine hydrochloride in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). In a judgment order filed June 27, 2016, the court sentenced Hyman to fifty-seven months' imprisonment with three years of supervised release. On November 22, 2016, Hyman filed a pro se notice of appeal challenging his sentence.¹ This Court appointed counsel and ordered briefing. Hyman filed his opening brief and joint appendix on February 13, 2017.

On March 2, 2017, the Government filed a motion to dismiss the appeal and suspend briefing, and we suspended briefing pending our ruling on the motion to dismiss. In its motion, the Government argued that Hyman had violated Federal Rule of Appellate Procedure 4(b)(1)(A) by failing to file a notice of appeal within fourteen days of the

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district court's judgment order and that delinquency required dismissal of the appeal. Hyman responded that the Court should allow the untimely appeal because the Government unnecessarily delayed its filing of the motion to dismiss until after he had filed his opening brief. The Government did not reply. We calendared the appeal and motion to dismiss for oral argument and resumed the briefing schedule.

In its response brief on appeal, the Government specifically argued that it was permitted to file a motion to dismiss pursuant to our Local Rule 27(f). Hyman did not respond to this contention in his reply brief. We heard oral argument and now grant the Government's motion to dismiss. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

II.

Rule 3(a)(1) of the Federal Rules of Appellate Procedure mandates the timely filing of a notice of appeal in accordance with Rule 4. In turn, Rule 4(b)(1)(A) requires a criminal defendant to file his notice of appeal within fourteen days of the entry of the district court's judgment of conviction.² Since Hyman's final order of conviction was entered in the district court on June 27, 2016, he was required to file his notice of appeal no later than July 11, 2016. *See* Fed. R. App. P. 4(b)(1)(A). Consequently, Hyman's notice of appeal filed November 22, 2016, and dated November 2, 2016, was over three months late.

² Rule 4(b)(3) extends the time to file to fourteen days from the resolution of certain post-trial motions, and Rule 4(b)(4) also permits the district court—upon motion or sua sponte—to extend the filing period by thirty days “[u]pon a finding of excusable neglect or good cause.” Neither rule applies in this case.

The parties agree that the late filing of a notice of appeal does not deprive the Court of subject matter jurisdiction, but Rule 4 is a mandatory claim-processing rule. *See United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009) (holding that a violation of Rule 4(b) does not deprive the Court of jurisdiction); *see also Manrique v. United States*, 581 U.S. ___, 137 S. Ct. 1266, 1271 (2017) (refusing to determine whether Rule 4 is jurisdictional but stating that “[t]he requirement that a defendant file a timely notice of appeal . . . is at least a mandatory claim-processing rule”). A mandatory claim-processing rule—like Rule 4(b)(1)(A)—is inflexible “but ‘can nonetheless be forfeited if the party asserting the rule waits too long to raise the point.’” *Eberhart v. United States*, 546 U.S. 12, 15 (2005) (per curiam) (quoting *Kontrick v. Ryan*, 540 U.S. 443, 456 (2004)).

In addition to the Federal Rules of Appellate Procedure, our Court has promulgated Local Rules that also apply to cases in this Circuit. *See* Fed. R. App. P. 47(a) (permitting each court of appeals to, “after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice”). Local Rule 27(f) states, “Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or for other procedural grounds may be filed at any time.”

Local Rule 27(f) is a broad rule that allows a party to move to dismiss (1) on procedural grounds, *and* (2) at any time. We apply the rule in accordance with its plain language. *See United States v. Shank*, 395 F.3d 466, 469 (4th Cir. 2005) (first rejecting the appellant’s arguments due to “the plain language of the rule”). Local Rule 27(f) clearly and unambiguously allows a party to file a motion to dismiss on procedural grounds *at any time*.

Because we are required to strictly apply claim-processing rules if they are timely raised, and because our Local Rules as currently written permit a party to raise the timeliness issue at any time, we grant the Government's motion to dismiss. *Eberhart*, 546 U.S. at 18 (recognizing that "when the Government objected to a filing untimely under [Federal Rule of Criminal Procedure 37, the predecessor to Federal Rule of Appellate Procedure 4(b)], the court's duty to dismiss the appeal was mandatory"). In fact, if we were to deny its motion to dismiss, we would in effect be sanctioning the Government for following our own Rule. Under the Federal Rules of Appellate Procedure, we cannot do so. *See* Fed. R. App. P. 47(b) ("No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.").

In his response to the Government's motion to dismiss, Hyman cites to our precedent for the proposition that a party must raise the timeliness issue as early as possible. *See Ga. Pac. Consumer Prods., LP v. Von Drehle Corp.*, 710 F.3d 527, 534 (4th Cir. 2013); *Peterson v. Air Line Pilots Ass'n, Int'l*, 759 F.2d 1161, 1164 (4th Cir. 1985). These cases, however, address affirmative defenses at trial, not appellate counterarguments. Hyman also relies on cases from the Seventh and D.C. Circuits to argue that the Government should have filed its motion before Hyman filed his opening brief. *See Ramos v. Ashcroft*, 371 F.3d 948, 950 (7th Cir. 2004); *Miss. River Transmission Corp. v. FERC*, 969 F.2d 1215, 1217 n.2 (D.C. Cir. 1992). However, the rules of those circuits regarding motions to dismiss differ from our own and have no

application to cases in this Circuit, which are subject to the Local Rules of the Fourth Circuit.³

Hyman did not address the application of Local Rule 27(f) in his briefs, even after the Government cited to the Rule in its brief as the basis for granting the motion to dismiss the appeal. When asked at oral argument to articulate a standard for establishing the point at which a motion to dismiss would be untimely and deemed waived, Hyman stated only that the Government was simply too late in this case. Hyman's difficulty in articulating a standard reflects the frailty of attempting to insert a nebulous equity argument in the face of a clear, mandatory claim-processing rule. Moreover, Hyman never identified any prejudice he suffered by virtue of the timing of the Government's motion to dismiss.

Finally, our recent decision in *United States v. Oliver*, __ F.3d __, 2017 WL 6505851 (4th Cir. Dec. 20, 2017), is not inapposite. In that case, the Court determined the conditions necessary to warrant the exercise of its inherent power sua sponte under Local Rule 27(f), which states in pertinent part, "The Court may also sua sponte summarily dispose of any appeal at any time." Within its analysis, the Court addressed when a party may file a motion to dismiss, stating, "[I]f the [respondent] fails to object promptly to an appeal's untimeliness in either its merits brief or an earlier motion to dismiss, it generally forfeits the right to do so." *Oliver*, 2017 WL 6505851, at *2. The Court, however,

³ The D.C. Circuit requires a party to file a motion to dismiss within forty-five days of the docketing of the appeal, and that deadline is mentioned in the *Mississippi River Transmission Corp.* case. See D.C. Cir. R. 27(g)(1). The Seventh Circuit has no rule regarding motions to dismiss and is therefore free to fashion case-specific rules. By contrast, we are constrained by our Local Rule 27(f).

recognized the broad language of Local Rule 27(f) in allowing a party to file a motion to dismiss “at any time” and declined to decide the limits of that part of the Rule, although it did determine that the Government had forfeited its right to move for dismissal because it did not object to the untimely appeal “until well after the merits briefing.” *Id.* at *2 & n.2. As in *Oliver*, we decline to determine the boundaries of Local Rule 27(f). Regardless, under whatever limitations may cabin the Rule, the Government here filed its motion to dismiss for untimeliness well within any limits recognized in *Oliver* because the Government raised the dismissal argument before filing its response brief and within that brief. Other than his argument that the Government waived the right to file the motion to dismiss by virtue of the time of its filing, Hyman raises no other arguments as to the motion to dismiss.

For all these reasons, we conclude that the Government’s motion to dismiss was timely: “The court of appeals may, in its discretion, overlook defects in a notice of appeal *other than the failure to timely file a notice.*” *Manrique*, 137 S. Ct. at 1274 (second emphasis added). Therefore, the Government’s motion to dismiss Hyman’s untimely appeal is granted. The appeal is dismissed.

DISMISSED

FILED: March 9, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4771
(1:15-cr-00311-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ADRIAN DEMOND HYMAN

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix B

FILED: March 9, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4771
(1:15-cr-00311-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ADRIAN DEMOND HYMAN

Defendant - Appellant

O R D E R

Upon consideration of appellant's petition for rehearing and rehearing en banc, the court grants panel rehearing and issues an amended opinion on rehearing.

The petition for rehearing en banc is denied, no poll having been requested pursuant to Fed. R. App. P. 35(f).

Entered at the direction of Judge Agee with the concurrence of Judge Wilkinson and Judge Duncan.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix C

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4771

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

ADRIAN DEMOND HYMAN,

Defendant – Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:15-cr-00311-LCB-1)

Argued: October 24, 2017

Decided: January 22, 2018

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Motion to dismiss granted by published opinion. Judge Agee wrote the opinion, in which Judge Wilkinson and Judge Duncan joined.

ARGUED: Sarah Marie Powell, DUKE UNIVERSITY SCHOOL OF LAW, Durham, North Carolina, for Appellant. Vijay Shanker, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:** Kenneth A. Blanco, Acting Assistant Attorney General, Trevor N. McFadden, Deputy Assistant Attorney General, Appellate Section, Criminal Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Sandra J. Hairston, Acting United States Attorney, Kyle David Pousson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Procedure 4(b)(1)(A) by failing to file a notice of appeal within fourteen days of the district court's judgment order and that delinquency required dismissal of the appeal. Hyman responded that the Court should allow the untimely appeal because the Government unnecessarily delayed its filing of the motion to dismiss until after he had filed his opening brief. The Government did not reply. We calendared the appeal and motion to dismiss for oral argument and resumed the briefing schedule.

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Finally, our recent decision in *United States v. Oliver*, ___ F.3d ___, 2017 WL 6505851 (4th Cir. Dec. 20, 2017), is not inapposite. In that case, the Court determined the conditions necessary to warrant the exercise of its inherent power sua sponte under Local Rule 27(f), which states in pertinent part, "The Court may also sua sponte summarily dispose of any appeal at any time." Within its analysis, the Court addressed when a party

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may file a motion to dismiss, stating, “[I]f the [respondent] fails to object promptly to an appeal’s untimeliness in either its merits brief or an earlier motion to dismiss, it generally forfeits the right to do so.” *Oliver*, 2017 WL 6505851, at *2. The Court, however, recognized the broad language of Local Rule 27(f) in allowing a party to file a motion to dismiss “at any time” and declined to decide the limits of that part of the Rule, although it did determine that the Government had forfeited its right to move for dismissal because it did not object to the untimely appeal “until well after the merits briefing.” *Id.* at *2 & n.2. As in *Oliver*, we decline to determine the boundaries of Local Rule 27(f). Regardless, under whatever limitations may cabin the Rule, the Government here filed its motion to dismiss for untimeliness well within any limits recognized in *Oliver* because the Government raised the dismissal argument before filing its response brief and within that brief. Other than his argument that the Government waived the right to file the motion to dismiss by virtue of the time of its filing, Hyman raises no other arguments as to the motion to dismiss.

For all these reasons, we conclude that the Government’s motion to dismiss was timely: “The court of appeals may, in its discretion, overlook defects in a notice of appeal *other than the failure to timely file a notice.*” *Manrique*, 137 S. Ct. at 1274 (second emphasis added). Therefore, the Government’s motion to dismiss Hyman’s untimely appeal is granted. The appeal is dismissed.

DISMISSED

Appendix D

18 U.S.C. § 3742

(a) APPEAL BY A DEFENDANT.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
- (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

...

(d) RECORD ON REVIEW.—If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

- (1) that portion of the record in the case that is designated as pertinent by either of the parties;
- (2) the presentence report; and
- (3) the information submitted during the sentencing proceeding.

(e) CONSIDERATION.—Upon review of the record, the court of appeals shall determine whether the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines;
- (3) is outside the applicable guideline range, and
 - (A) the district court failed to provide the written statement of reasons required by section 3553(c);

- (B) the sentence departs from the applicable guideline range based on a factor that—
 - i. does not advance the objectives set forth in section 3553(a)(2); or
 - ii. is not authorized under section 3553(b); or
 - iii. is not justified by the facts of the case; or
 - (C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or
- (4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

Federal Rule of Appellate Procedure 4(b)

Rule 4. Appeal as of Right – When Taken

(b) APPEAL IN A CRIMINAL CASE.

(1) *Time for Filing a Notice of Appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

- (i) the entry of either the judgment or the order being appealed; or
- (ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

- (i) the entry of the judgment or order being appealed; or
- (ii) the filing of a notice of appeal by any defendant.

...

(4) *Motion for Extension of Time.* Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

**Relevant Local Rules for the Fourth, First, Second, Third,
Sixth, Eighth, Tenth, D.C., and Federal Circuits**

Fourth Circuit

Local Rule 27(f) *Motions for Summary Disposition.*

...

Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or for other procedural grounds may be filed at any time. The Court may also sua sponte summarily dispose of any appeal at any time.

First Circuit

1st Cir. R. 27.0(c)

(c) Summary Disposition. At any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious error the court may, similarly, reverse. Motions for such relief should be promptly filed when the occasion appears.

Second Circuit

2d Cir. R. 27.1(f) Motion to Extend the Time to File a Brief.

(1) Extraordinary Circumstance Required. Absent an extraordinary circumstance, such as serious personal illness or death in counsel's immediate family, the court will not grant a motion to extend the time to file a brief. A deadline for a brief remains in effect unless the court orders otherwise.

...

(3) Time to File. A party seeking to extend the time to file a brief must move as soon as practicable after the extraordinary circumstance arises.

Third Circuit

3d Cir. R. 27.4(b).

Except for a change in circumstances or a change in law, motions for summary action or dismissal should be filed before appellant's brief is due.

Sixth Circuit

6th Cir. R. 27(d).

Motion to Dismiss. A party may file a motion to dismiss for lack of jurisdiction. Ordinarily, the court will not grant other motions to dismiss.

Eighth Circuit

8th Cir. R. 47A: SUMMARY DISPOSITION

(b) On Motion of Parties. The appellee may file a motion to dismiss a docketed appeal on the ground the appeal is not within the court's jurisdiction. Except for good cause or on the motion of the court, a motion to dismiss based on jurisdiction must be filed within 14 days after the court has docketed the appeal.

Tenth Circuit

10th Cir. R. 27.3 Summary disposition on motion by a party or the court.

(A) Motions to dismiss or affirm.

(1) Types. A party may file only the following dispositive motions:

(a) a motion to dismiss the entire case for lack of appellate jurisdiction or for any other reason a dismissal is permitted by statute, the Federal Rules of Appellate Procedure or these rules.

...

(d) a motion by the government to enforce an appeal waiver.

...

(3) Time to file.

(a) A motion under (A)(1)(a) through (c) should be filed within 14 days after the notice of appeal is filed, unless good cause is shown.

(b) A motion under (A)(1)(d) must be filed within 20 days after:

- i. the district court's notice, pursuant to 10th Cir. R. 11.1, that the record is complete, or;
- ii. the district court's notice that it is transmitting the record pursuant to 10th Cir. R. 11.2.

(c) Failure to file a timely motion to enforce an appeal waiver does not preclude a party from raising the issue in a merits brief.

D.C. Circuit

D.C. Cir. R. 27(g)(1)

Any motion which, if granted, would dispose of the appeal or petition for review in its entirety, or transfer the case to another court, must be filed within 45 days of the docketing of the case in this court, unless, for good cause shown, the court grants leave for a later filing.

D.C. Cir. R. 27(h)(1), (4).

A motion to extend the time for filing motions, responses, and replies, or to exceed the page limits for such pleadings, must be filed at least 5 days before the pleading is due.

Motions filed less than 5 days before the due date will be denied absent exceptional circumstances, except that the clerk may grant unopposed late filed motions for extension of time for good cause shown.

Federal Circuit

27(f) Motion to Dismiss or to Remand; Response.

A motion to dismiss for lack of jurisdiction or to remand should be made as soon after docketing as the grounds for the motion are known. After the appellant or petitioner has filed the principal brief, the argument supporting dismissal for lack of jurisdiction or remand should be made in the brief of the appellee or respondent. A response in opposition, if any, should be included in the responsive brief. Joint or unopposed motions or stipulations to dismiss or to remand may be made at any time.

27(g) Motion Incorporated in a Brief.

Except as provided in Federal Circuit Rule 27(e) and (f), a motion must not be incorporated in a brief.

APPENDIX E

General Docket
United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 16-4771

US v. Adrian Hyman

Docketed: 11/23/2016**Termed:** 03/09/2018**Appeal From:** United States District Court for the Middle District of North Carolina at Greensboro**Fee Status:** cja**Case Type Information:**

- 1) Criminal
- 2) Direct Criminal
- 3) null

Originating Court Information:**District:** 0418-2 : [1:15-cr-00311-LCB-1](#)**Court Reporter:** Jane Calhoun, Official Court Reporter**Court Reporter:** Keah Marsh, Court Reporter Coordinator**Court Reporter:** Lori Russell, Official Court Reporter**Presiding Judge:** Loretta C. Biggs, U. S. District Court Judge**Date Filed:** 08/31/2015**Date Order/Judgment:**
06/27/2016**Date Order/Judgment EOD:**
06/24/2016**Date NOA Filed:**
11/22/2016**Date Rec'd COA:**
11/22/2016**Prior Cases:**

None

Current Cases:

None

UNITED STATES OF AMERICA
 Plaintiff - Appellee

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v.



























ADRIAN DEMOND HYMAN
 Defendant - Appellant

Sarah Marie Powell
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 [COR NTC CJA Appointment]

11/23/2016	1 1 pg, 11.78 KB	Criminal case docketed. Originating case number: 1:15-cr-00311-LCB-1. Date notice of appeal filed: 11/22/2016. Case manager: REdwards. [16-4771] RE [Entered: 11/23/2016 09:34 AM]
11/29/2016	2 8 pg, 127.94 KB	ORDER filed [999977012] appointing/assigning counsel. Nunc pro Tunc Date: 11/29/2016. Additional attorneys added: Sarah Marie Powell for Adrian Demond Hyman, in case 16-4771 Representation Type: CJA-TD.. Copies to all parties. Mailed to: ADRIAN DEMOND HYMAN - #19878-056 FCI Petersburg Low FEDERAL CORRECTIONAL INSTITUTION P.O. BOX 1000 PETERSBURG, VA 23804. [16-4771] LM [Entered: 11/29/2016 10:52 AM]
12/05/2016	3 1 pg, 76.44 KB	APPEARANCE OF COUNSEL (Local Rule 46(c)) by Sarah M. Powell for Adrian Demond Hyman. [999980777] [16-4771] Sarah Powell [Entered: 12/05/2016 03:16 PM]
12/05/2016	4 7 pg, 449.31 KB	DOCKETING STATEMENT by Appellant Adrian Demond Hyman. [16-4771] Sarah Powell [Entered: 12/05/2016 03:32 PM]
12/05/2016	6 1 pg, 15.08 KB	DOCKETING FORMS FOLLOW-UP NOTICE ISSUED to Attorney Mr. Kyle David Pousson for Appellee US re: filing of appearance form (Loc.R. 46(g)). Appearance form due on 12/08/2016 from Kyle David Pousson.. [16-4771] RE [Entered: 12/05/2016 03:42 PM]
12/05/2016	7 6 pg, 101.23 KB	TRANSCRIPT ORDER ACKNOWLEDGMENT filed for Jane Calhoun. Identify by proceeding and date all transcript ordered from this court reporter: Sentencing 06/13/2016. Names of all parties ordering transcript from this reporter: Adrian Hyman. Originating case number: 1:15-cr-00311-LCB-1. Transcript due from Jane Calhoun, Official Court Reporter on 01/11/2017. [16-4771] RE [Entered: 12/05/2016 03:46 PM]
12/05/2016	8 6 pg, 101.96 KB	TRANSCRIPT ORDER ACKNOWLEDGMENT filed for Lori Russell. Identify by proceeding and date all transcript ordered from this court reporter: Plea Hearing 12/09/2015. Names of all parties ordering transcript from this reporter: Adrian Hyman.. Originating case number: 1:15-cr-00311-LCB-1. Transcript due from Lori Russell, Official Court Reporter on 01/11/2017. [16-4771] RE [Entered: 12/05/2016 03:48 PM]
12/05/2016	9 1 pg, 82.96 KB	APPEARANCE OF COUNSEL (Local Rule 46(c)) for US.[999980931] [16-4771] Kyle Pousson [Entered: 12/05/2016 04:22 PM]
01/06/2017	10	DISTRICT COURT UPDATE. TRANSCRIPT filed as to ADRIAN DEMOND HYMAN for the date of 12/09/2015, before Judge Loretta C. Biggs, re: Change of Plea Hearing, Court Reporter Lori Russell, Telephone number 336-734-2547. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER. Does this satisfy all appellate orders for this reporter? y. Redaction Request due 1/30/2017. Redacted Transcript Deadline set for 2/9/2017. Release of Transcript Restriction set for 4/10/2017. [16-4771] AD [Entered: 01/06/2017 12:57 PM]
01/09/2017	11	DISTRICT COURT UPDATE. TRANSCRIPT filed as to ADRIAN DEMOND HYMAN for dates of 6-13-16, before Judge Biggs, re Sentencing, Court Reporter/Transcriber Calhoun-, Telephone number 336-332-6033. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. <P>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER. </P> Does this satisfy all appellate orders for this reporter? y Redaction Request due 2/2/2017. Redacted Transcript Deadline set for 2/13/2017. Release of Transcript Restriction set for 4/13/2017. [16-4771] AD [Entered: 01/09/2017 02:19 PM]
01/09/2017	12 2 pg, 21.63 KB	BRIEFING ORDER filed.. Opening brief and appendix due 02/13/2017. Response brief due 03/06/2017 [16-4771] RE [Entered: 01/09/2017 02:49 PM]
02/13/2017	13 81 pg, 1.08 MB	BRIEF by Appellant Adrian Demond Hyman in electronic and paper format. Type of Brief: OPENING. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 02/13/2017. [1000022182] [16-4771] Sarah Powell [Entered: 02/13/2017 09:09 AM]
02/13/2017	14 114 pg, 1.74 MB	Joint FULL ELECTRONIC APPENDIX and full paper appendix by Appellant Adrian Demond Hyman. Method of Filing Paper Copies: mail. Date paper copies mailed dispatched or delivered to court: 02/13/2017. [1000022186] [16-4771] Sarah Powell [Entered: 02/13/2017 09:10 AM]
02/13/2017	15	Joint SEALED APPENDIX VOLUME(S) (court access only) by Appellant Adrian Demond Hyman in electronic and paper format. Method of Filing Paper Copies: mail. Date Copies Mailed, Dispatched, or Delivered to court: 02/13/2017.. Filed Ex parte: N. [16-4771] Sarah Powell [Entered: 02/13/2017 09:29 AM]
02/13/2017	16 1 pg, 77.81 KB	CERTIFICATE OF CONFIDENTIALITY (Local Rule 25(c)) by Adrian Demond Hyman. Sealing Required: Yes.. [16-4771] Sarah Powell [Entered: 02/13/2017 09:31 AM]
02/13/2017	17 1 pg, 7.96 KB	ORDER filed [1000022300] sealing. Joint Appendix Volume II. Copies to all parties.. [16-4771] RE [Entered: 02/13/2017 10:19 AM]
02/13/2017	18	OPENING BRIEF (PAPER) file-stamped, on behalf of Adrian Demond Hyman. Number of pages: [81]. Sufficient: YES. Number of Copies: [1]. Entered on Docket Date: 02/16/2017. Received by clerk date: 02/16/2017. [1000025133] [16-4771] RE [Entered: 02/16/2017 12:01 PM]
02/13/2017	19	APPENDIX (PAPER) file-stamped, on behalf of Adrian Demond Hyman and US. Total number of volumes

(including any sealed): 2. Total number of pages in all volumes: 150. Total number of sealed volumes: 1. Sufficient? Yes. CD/DVD/Other exhibit? No. Number of Copies: 1. Entered on Docket Date: 02/16/2017. Received by clerk date: 02/16/2017. [1000025138] [16-4771] RE [Entered: 02/16/2017 12:04 PM]

03/02/2017	<input type="checkbox"/> 20 4 pg, 40.01 KB	MOTION by Appellee US to dismiss appeal [20], to suspend Briefing Order. Date and method of service: 03/02/2017 ecf. [1000034629] [16-4771] Kyle Pousson [Entered: 03/02/2017 04:13 PM]
03/02/2017	<input type="checkbox"/> 21 1 pg, 8.65 KB	NOTICE ISSUED to Sarah Marie Powell for Adrian Demond Hyman requesting response to Motion to dismiss appeal [20] Response due: Response due 03/13/2017. [1000034636]. [16-4771] RE [Entered: 03/02/2017 04:18 PM]
03/02/2017	<input type="checkbox"/> 22 2 pg, 150.04 KB	Letter re: Letter regarding motion to suspend briefing [20] Motion to dismiss appeal, [20] Motion to suspend by Appellant Adrian Demond Hyman. [1000034737] [16-4771] Sarah Powell [Entered: 03/02/2017 11:09 PM]
03/03/2017	<input type="checkbox"/> 23 1 pg, 9.04 KB	NOTICE ISSUED to Sarah Marie Powell for Adrian Demond Hyman requesting response to Motion to suspend [20]. Response due: 03/10/2017. [1000035008]. [16-4771] TW [Entered: 03/03/2017 10:14 AM]
03/06/2017	<input type="checkbox"/> 24 9 pg, 229.2 KB	RESPONSE/ANSWER by Adrian Demond Hyman to notice requesting response [23], Motion to dismiss appeal [20], Motion to suspend [20]. Nature of response: in opposition. [16-4771] Sarah Powell [Entered: 03/06/2017 06:23 AM]
03/06/2017	<input type="checkbox"/> 25 1 pg, 7.93 KB	ORDER filed [1000036070] granting Motion to suspend [20] Copies to all parties.. [16-4771] RE [Entered: 03/06/2017 12:46 PM]
03/07/2017	<input type="checkbox"/> 26 4 pg, 68.57 KB	MOTION by Appellant Adrian Demond Hyman to extend filing time for response until March 28, 2017. Date and method of service: 03/07/2017 ecf. [1000037858] [16-4771] Sarah Powell [Entered: 03/07/2017 06:59 PM]
03/08/2017	<input type="checkbox"/> 27 1 pg, 7.99 KB	ORDER filed [1000038057] granting Motion to extend filing time [26], updating motion/amended motion deadline Response due 03/28/2017 Copies to all parties. [16-4771] RE [Entered: 03/08/2017 09:23 AM]
03/28/2017	<input type="checkbox"/> 28 40 pg, 2.06 MB	RESPONSE/ANSWER by Adrian Demond Hyman to Motion to dismiss appeal [20], Motion to suspend [20], notice requesting response [21]. Nature of response: in opposition. [16-4771] Sarah Powell [Entered: 03/28/2017 01:29 PM]
06/08/2017	<input type="checkbox"/> 29 2 pg, 16.73 KB	CASE TENTATIVELY CALENDARED for oral argument during the 9/12/17 - 9/15/17 argument session. Additional copies due: 06/13/2017. Notify Clerk's Office of any scheduling conflict by: 06/16/2017. [16-4771] JLC [Entered: 06/08/2017 05:47 PM]
06/09/2017	<input type="checkbox"/> 30 2 pg, 10.09 KB	BRIEFING ORDER filed. Response brief due 06/30/2017. [16-4771] ALC [Entered: 06/09/2017 11:19 AM]
06/14/2017	<input type="checkbox"/> 31	Additional copies of the OPENING BRIEF and JOINT APPENDIX (Vols. 1-2 Vol. 2 SEALED) received from Adrian Demond Hyman. [16-4771] AC [Entered: 06/14/2017 05:03 PM]
06/22/2017	<input type="checkbox"/> 32 1 pg, 271.12 KB	APPEARANCE OF COUNSEL (Local Rule 46(c)) by Vijay Shanker for US. [1000105310] [16-4771] V jay Shanker [Entered: 06/22/2017 10:48 AM]
06/22/2017	<input type="checkbox"/> 33 3 pg, 45.91 KB	MOTION by Appellee US to extend filing time for response brief until 07/31/2017. Date and method of service: 06/22/2017 ecf. [1000105354] [16-4771] Kyle Pousson [Entered: 06/22/2017 11:21 AM]
06/22/2017	<input type="checkbox"/> 34 1 pg, 59.1 KB	Letter re: [33] Motion to extend filing time by Appellant Adrian Demond Hyman. [1000105416] [16-4771] Sarah Powell [Entered: 06/22/2017 12:06 PM]
06/22/2017	<input type="checkbox"/> 35 1 pg, 11.83 KB	CASE CONTINUED FROM TENTATIVE CALENDAR TO AWAITING CALENDAR. [1000105639] [16-4771] JLC [Entered: 06/22/2017 02:57 PM]
06/22/2017	<input type="checkbox"/> 36 1 pg, 8.23 KB	ORDER filed [1000105652] granting Motion to extend filing time [33], updating briefing order deadlines. Response brief due 07/21/2017. Copies to all parties. [16-4771] TW [Entered: 06/22/2017 03:07 PM]
07/14/2017	<input type="checkbox"/> 37 2 pg, 16.81 KB	CASE TENTATIVELY CALENDARED for oral argument during the 10/24/17 - 10/26/17 argument session. Additional copies due: 07/19/2017. Notify Clerk's Office of any scheduling conflict by: 07/24/2017. [16-4771] JLC [Entered: 07/14/2017 12:10 PM]
07/18/2017	<input type="checkbox"/> 38 43 pg, 250.01 KB	BRIEF by Appellee US in electronic and paper format. Type of Brief: RESPONSE. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 07/18/2017. [1000120806] [16-4771] V jay Shanker [Entered: 07/18/2017 04:01 PM]
07/18/2017	<input type="checkbox"/> 39	RESPONSE BRIEF (PAPER) file-stamped, on behalf of US. Number of pages: [44]. Sufficient: YES. Number of Copies: [4]. Entered on Docket Date: 07/19/2017. Received by clerk date: 07/19/2017. [1000121249] [16-4771] RE [Entered: 07/19/2017 10:55 AM]
07/28/2017	<input type="checkbox"/> 40 45 pg, 485.47 KB	BRIEF by Appellant Adrian Demond Hyman in electronic and paper format. Type of Brief: REPLY. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 07/28/2017. [1000127155] [16-4771] Sarah Powell [Entered: 07/28/2017 11:00 AM]
07/28/2017	<input type="checkbox"/> 41	REPLY BRIEF (PAPER) file-stamped, on behalf of Adrian Demond Hyman. Number of pages: [46]. Sufficient: YES. Number of Copies: [4]. Entered on Docket Date: 08/07/2017. Received by clerk date: 08/02/2017. [1000132013] [16-4771] JR [Entered: 08/07/2017 09:18 AM]
08/15/2017	<input type="checkbox"/> 42 2 pg, 30.79 KB	CASE CALENDARED for oral argument. Date: 10/24/2017. Registration Time: 8:45 - 9:00. Daily Arguments Begin: 9:30. Oral argument acknowledgment form due within 5 days. [16-4771] JLC [Entered: 08/15/2017 10:27 AM]
08/15/2017	<input type="checkbox"/> 43 1 pg, 63.46 KB	ORAL ARGUMENT ACKNOWLEDGMENT by Appellee US. Counsel arguing: Vijay Shanker Answering argument time: 20 minutes [1000137463] [16-4771] V jay Shanker [Entered: 08/15/2017 02:29 PM]
08/15/2017	<input type="checkbox"/> 44	ORAL ARGUMENT ACKNOWLEDGMENT by Appellant Adrian Demond Hyman. Counsel arguing: Sarah

	1 pg, 102.15 KB	Powell Opening argument time: 17 Rebuttal argument time: 3 [1000137496] [16-4771] Sarah Powell [Entered: 08/15/2017 02:46 PM]
08/24/2017	 45 1 pg, 7.94 KB	COURT ORDER filed [1000143509] deferring action on Motion to dismiss appeal filed by Appellee US 20 Copies to all parties.. [16-4771] RE [Entered: 08/24/2017 02:04 PM]
10/24/2017	 46	ORAL ARGUMENT heard before the Honorable J. Harvie Wilkinson, III, Allyson K. Duncan and G. Steven Agee. Attorneys arguing case: Sarah Marie Powell for Appellant Adrian Demond Hyman and Mr. Vijay Shanker for Appellee US. Courtroom Deputy: Kevin Burson. [1000179663] [16-4771] Kevin Burson [Entered: 10/24/2017 01:20 PM]
01/22/2018	 47 7 pg, 26.88 KB	PUBLISHED AUTHORED OPINION filed. Motion disposition in opinion granting Motion to dismiss appeal 20 Originating case number: 1:15-cr-00311-LCB-1. [1000226851]. [16-4771] RE [Entered: 01/22/2018 07:53 AM]
01/22/2018	 48 3 pg, 27.1 KB	JUDGMENT ORDER filed. Disposition method: 16-4771 opn.p.arg. Decision: Dismissed. Originating case number: 1:15-cr-00311-LCB-1. Entered on Docket Date: 01/22/2018. [1000226857] Copies to all parties and the district court/agency.. [16-4771] RE [Entered: 01/22/2018 07:56 AM]
01/22/2018	 49 2 pg, 35.48 KB	Copy of judgment and certiorari status form transmitted to defendant and counsel. 48 Judgment Order , 47 Published Authored Opinion. Copy mailed to defendant?Yes. Address of Defendant: ADRIAN DEMOND HYMAN - #19878-056 FCI Butner Medium I FEDERAL CORRECTIONAL INSTITUTION P.O. BOX 1000 BUTNER, NC 27509. [16-4771] LM [Entered: 01/22/2018 11:05 AM]
02/03/2018	 50 34 pg, 1.96 MB	PETITION for rehearing and rehearing en banc by Appellant Adrian Demond Hyman. [16-4771] Sarah Powell [Entered: 02/03/2018 07:35 PM]
02/03/2018	 51	SEALED DOCUMENT (court access only) by Appellant Adrian Demond Hyman Document type: OTHER DOCUMENT. Date and manner of service: 02/03/2018 US mail. Filed Ex parte: Y. [1000235063] [16-4771] Sarah Powell [Entered: 02/03/2018 07:59 PM]
02/03/2018	 52 1 pg, 100.97 KB	CERTIFICATE OF CONFIDENTIALITY (Local Rule 25(c)) by Adrian Demond Hyman. Sealing Required: Yes. Description of document referenced by certificate: Sealed Exhibit for Hyman Petition for Rehearing And Rehearing En Banc. [16-4771] Sarah Powell [Entered: 02/03/2018 08:00 PM]
02/05/2018	 53 1 pg, 8.92 KB	Mandate stayed by FRAP 41(d)(1) pending ruling on petition for rehearing or rehearing en banc.. [16-4771] RE [Entered: 02/05/2018 08:14 AM]
02/07/2018	 54 4 pg, 92.77 KB	MOTION by Appellant Adrian Demond Hyman to seal. Description of material to be sealed: Sealed Exh bit 1, filed with Hyman's Petition for Rehearing and Rehearing En Banc on 2/3/2018.. Date and method of service: 02/07/2018 ecf. [1000237284] [16-4771] Sarah Powell [Entered: 02/07/2018 12:25 PM]
02/13/2018	 55 1 pg, 7.99 KB	COURT ORDER filed [1000240954] granting Motion to seal 54 Copies to all parties.. [16-4771] RE [Entered: 02/13/2018 03:48 PM]
02/14/2018	 56 1 pg, 9.29 KB	NOTICE ISSUED to Mr. Kyle David Pousson for US and Mr. Vijay Shanker for US requesting response to Motion for rehearing and rehearing en banc. [16-4771] RE [Entered: 02/14/2018 04:05 PM]
02/26/2018	 57 23 pg, 178.85 KB	RESPONSE/ANSWER to rehearing and rehearing en banc by US. [16-4771] Kyle Pousson [Entered: 02/26/2018 03:35 PM]
02/28/2018	 58 21 pg, 182.96 KB	MOTION by Appellant Adrian Demond Hyman Sarah M. Powell, CJA counsel leave to file Reply Brief In Support of Petition For Rehearing And Rehearing En Banc rehearing Response 57 . Date and method of service: 02/28/2018 ecf. [1000249272] [16-4771] Sarah Powell [Entered: 02/28/2018 08:52 AM]
02/28/2018	 61 16 pg, 159.31 KB	REPLY by Adrian Demond Hyman to rehearing Response 57 . [16-4771] RE [Entered: 03/06/2018 02:31 PM]
03/05/2018	 59  0 pg, 0 KB	(ENTRY RESTRICTED) COURT ORDER filed [1000252265] granting Motion for leave to file reply to the response 58 Copies to all parties. [16-4771] RE [Entered: 03/05/2018 03:46 PM]
03/06/2018	 60 1 pg, 26 KB	Corrected COURT ORDER filed [1000252570] granting Motion for leave to file reply brief in support of petition for rehearing 58 Copies to all parties. [16-4771] RE [Entered: 03/06/2018 08:56 AM]
03/09/2018	 62 1 pg, 8.75 KB	COURT ORDER filed [1000255355] 50 , granting rehearing; denying rehearing en banc. Copies to all parties. [16-4771] RE [Entered: 03/09/2018 12:30 PM]
03/09/2018	 63 1 pg, 8.75 KB	Case reopened upon grant of rehearing/rehearing en banc. Originating case number: 1:15-cr-00311-LCB-1. [16-4771] RE [Entered: 03/09/2018 12:32 PM]
03/09/2018	 64 1 pg, 8.86 KB	ORDER filed [1000255358] amending opinion. Copies to all parties. [16-4771] RE [Entered: 03/09/2018 12:36 PM]
03/09/2018	 65 7 pg, 26.87 KB	PUBLISHED AUTHORED OPINION filed. Originating case number: 1:15-cr-00311-LCB-1. [1000255360]. [16-4771] RE [Entered: 03/09/2018 12:37 PM]
03/09/2018	 66 3 pg, 27.1 KB	JUDGMENT ORDER filed. Disposition method: 16-4771 opn.p.arg. Decision: Dismissed. Originating case number: 1:15-cr-00311-LCB-1. Entered on Docket Date: 03/09/2018. [1000255371] Copies to all parties and the district court/agency. [16-4771] RE [Entered: 03/09/2018 12:43 PM]
03/14/2018	 67 2 pg, 35.48 KB	Copy of judgment and certiorari status form transmitted to defendant and counsel. 66 Judgment Order , 65 Published Authored Opinion. Copy mailed to defendant?Yes. Address of Defendant: ADRIAN DEMOND HYMAN - #19878-056 FCI Butner Medium I FEDERAL CORRECTIONAL INSTITUTION P.O. BOX 1000 BUTNER, NC 27509. [16-4771] LM [Entered: 03/14/2018 10:05 AM]
04/02/2018	 68 1 pg, 8.77 KB	Mandate issued. Referencing: 66 Judgment Order , 65 Published Authored Opinion. Originating case number: 1:15-cr-00311-LCB-1. [16-4771] RE [Entered: 04/02/2018 07:44 AM]
04/13/2018	 69	CERTIORARI STATUS FORM by Appellant Adrian Demond Hyman. [16-4771] Sarah Powell [Entered: