

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 30, 2019

Clerk - Southern District of Georgia
U.S. District Court
125 BULL ST
PO BOX 8286
SAVANNAH, GA 31402

Appeal Number: 18-14483-F
Case Style: USA v. Frank Monsegue, Sr.
District Court Docket No: 4:14-cr-00019-WTM-GRS-1
Secondary Case Number: 4:16-cv-00021-WTM-GRS

The enclosed copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

All pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Dionne S. Young, F
Phone #: (404) 335-6224

Enclosure(s)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14483-F

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FRANK D. MONSEGUE, SR.,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Frank D. Monsegue, Sr. has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective April 30, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Dionne S. Young, F, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14483-F

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK D. MONSEGUE, SR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

ORDER:

Frank Monsegue seeks leave to proceed *in forma pauperis* ("IFP") in his appeal from the district court's denial of his Rule 4(b)(4), Fed. R. App. P., motion to reopen the time to file a direct appeal. As brief background, Monsegue is serving a total 87-month sentence after he pled guilty to conspiracy to commit wire fraud, theft of government property, and aggravated identity theft. The judgment on these convictions was entered on July 27, 2015, and was returned executed on October 6, 2015. Monsegue did not file a direct appeal.

On September 17, 2018, Monsegue filed his "Motion for Reopening the Time to File an Appeal," in which he stated that he was seeking relief under "FRAP Rule 4 (6) (A)(B)(C)." Monsegue asserted that he did not receive a copy of the criminal judgment entered on July 27, 2015, until "several months later" because he was "in transit" from August 2015 to September 2015.

The district court denied Monsegue's motion, which it liberally construed as seeking relief under Rule 4(b)(4). Although Monsegue alleged that he did not receive the criminal judgment for several months because he was "in transit," the district court noted that he had failed to explain why he waited nearly three years to file a Rule 4(b)(4) motion. Moreover, because it had been more than 30 days since the time to file a direct appeal expired, the district court determined that it lacked the authority to reopen the time to file a direct appeal under Rule 4(b)(4). Accordingly, the district court denied the motion. Monsegue appealed and filed a motion for leave to appeal IFP, which the district court denied.

Because Monsegue seeks leave to proceed IFP from this Court, his appeal is subject to a frivolity determination. See 28 U.S.C. § 1915(e)(2). "[A]n action is frivolous if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation omitted).

We review a district court's decision regarding the denial of a motion for extension of time to appeal for an abuse of discretion. *Advanced Estimating Sys., Inc. v. Riney*, 77 F.3d 1322, 1325 (11th Cir. 1996). In a criminal case, a defendant must file a notice of appeal within 14 days following entry of the order being appealed. Fed. R. App. P. 4(b)(1)(A). Under Rule 4(b)(4), a district court may, on its own or upon a motion, grant an extension of time to appeal for up to 30 days following the expiration of the initial appeal period, based on a finding of excusable neglect or good cause. Fed. R. App. P. 4(b)(4).

The district court did not abuse its discretion in denying Monsegue's Rule 4(b)(4) motion, as Monsegue did not establish excusable neglect or good cause for waiting nearly three years after the receipt of the criminal judgment to file his motion. *Advanced Estimating Sys., Inc.*, 77 F.3d at 1325. Moreover, the district court properly concluded that Monsegue was no longer eligible for

relief under Rule 4(b)(4) because, by the time he filed his Rule 4(b)(4) motion, it had been more than 30 days since the expiration of the time to file a direct appeal. *See* Fed. R. App. P. 4(b)(1)(A); *see also United States v. Lopez*, 562 F.3d 1309, 1314 (11th Cir. 2009) (holding that, if a criminal defendant's notice of appeal is filed more than 30 days after the expiration of the initial 14-day appeal period, then the defendant is not eligible for relief under Rule 4(b)(4)). Accordingly, Monsegue's motion for IFP status is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FRANK D. MONSEGUE, SR.,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NOS. CV416-021

CR414-019

ORDER

Before the Court is Movant Frank D. Monsegue, Sr.'s Motion for Reopening the Time to File an Appeal. (Doc. 155).¹ In his motion, Movant appears to request that the Court reopen the time for him to file a direct appeal of his criminal sentence. According to Movant, he did not receive a copy of the written judgment entered on July 27, 2015, until "several months later" because he was in transit shortly after his sentencing from August 22, 2015 until September 8, 2015. (*Id.* at 1.) For the following reasons, Movant's motion must be DENIED.

After a careful review of Movant's motion and the record in this case, the Court concludes that Federal Rule of Appellate Procedure 4 affords Movant no relief. First, Movant seeks relief under the Federal Rule of Appellate Procedure 4(a)(6), which provides for the reopening of time to file an appeal in a civil

¹ All citations are to Movant's criminal docket at 4:14-cr-00019, except where denoted otherwise.

case if the moving party did not receive notice "of the entry of the judgment or order sought to be appealed within 21 days after entry," and "the motion is filed within 180 days after the judgment

~~or order is entered or within 14 days after the moving party~~

receives notice...whichever is earlier." Id. 4(a)(6)(A), (B). These

rules do not apply to an appeal of Movant's criminal judgment.

Even if these rules did apply, Movant clearly failed to file his

motion within the proscribed timelines, either within fourteen

days after receiving a copy of the judgment or, at the latest,

within 180 days after the entry of the judgment. The judgment was

entered on July 27, 2015, and this motion comes before the Court

on September 20, 2018.

Second, reviewing Movant's motion under Federal Rule of

Appellate Procedure 4(b), which governs appeals in criminal cases,

provides Movant no relief. Federal Rule of Appellate Procedure

4(b)(1)(A) provides that a defendant must file a notice of appeal

within fourteen days after entry of the judgment. However, under

Rule 4(b)(4), the time to file a notice of appeal may be extended

upon a finding of excusable neglect or good cause "for a period

not to exceed 30 days from the expiration of the time otherwise

proscribed by this Rule 4(b)." Fed. R. App. P. 4(b)(4).

Movant stated that he was in transit from August 22, 2015

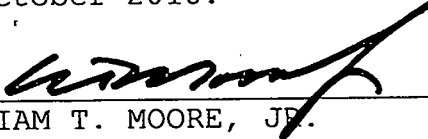
through September 8, 2015 and did not receive a copy of the

judgment until "several months later." (Doc. 155.) However, Movant

has failed to explain why he has waited three years to seek a direct appeal or otherwise establish excusable neglect or good cause for his failure to timely file a direct appeal. Movant has ~~failed to establish sufficient reasons for seeking to appeal three~~ years after the entry of the judgment.

Further, Rule 4(b)(4) limits the extension of the time to file an appeal to thirty days beyond Rule 4(b)'s fourteen-day deadline. Movant's time to appeal his criminal conviction expired on August 10, 2015, fourteen days after entry of judgment on July 27, 2015. Had this deadline been extended, the extended deadline would have ended on September 9, 2015. Rule 4(b) does not permit this Court to extend the time to file a notice of appeal more than thirty days past the deadline of August 10, 2015. See United States v. Lopez, 562 F.3d 1309, 1314 (11th Cir. 2009). As a result, the Court lacks the power to reopen the time for Movant to file an appeal. Accordingly, Movant's Motion for Reopening the Time to File an Appeal is DENIED.

SO ORDERED this 18th day of October 2018.


WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14483-F

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK D. MONSEGUE, SR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

Before: JORDAN and ROSENBAUM, Circuit Judges.

BY THE COURT:

Frank Monsegue has filed a motion “[t]o proceed as veteran,” which should be construed as a motion for reconsideration of this Court’s February 21, 2019, order denying his motion for leave to proceed *in forma pauperis* in his appeal from the district court’s denial of his Fed. R. App. P. 4(b)(4) motion to reopen the time to file a direct appeal. Upon review, Monsegue’s motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

**UNITED STATES COURT OF APPEALS
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Atlanta, Georgia 30303

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Clerk of Court

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April 11, 2019

Frank D. Monsegue Sr.
FCI Jesup Satellite Low - Inmate Legal Mail
2680 HWY 301 S
JESUP, GA 31599

Appeal Number: 18-14483-F
Case Style: USA v. Frank Monsegue, Sr.
District Court Docket No: 4:14-cr-00019-WTM-GRS-1
Secondary Case Number: 4:16-cv-00021-WTM-GRS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Dionne S. Young, F
Phone #: (404) 335-6224

**Additional material
from this filing is
available in the
Clerk's Office.**