

Appendix A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 1, 2019

Before:

William J. Bauer, *Circuit Judge*
Joel M. Flaum, *Circuit Judge*
David F. Hamilton, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 19-1406 v.

CALVIN BUFFINGTON,
Defendant-Appellant.

] Appeal from the United
] States District Court for
] the Northern District of
] Illinois, Eastern Division.
]
] No. 1:07-cr-00410-1
]
] Harry D. Leinenweber,
] Judge.

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED because it is untimely.

In its responsive memorandum, appellee United States stands on its rights and invokes the 14-day time limit of Rule 4(b) of Federal Rules of Appellate Procedure. The court, therefore, must enforce the rule. *See United States v. Rollins*, 667 F.3d 500, 501 (7th Cir. 2010).

Rule 4(b) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a criminal case be filed in the district court within 14 days of the entry of the judgment or order appealed. A review of appellant Buffington's notice of Appeal states that he appeals the district court's April 12, 2017, order denying a motion to reduce sentence. But the notice of appeal (and accompanying letter dated February 22, 2019)

was filed on March 5, 2019, nearly two years days late. *See* Fed. R. App. 4(c) (prison mailbox rule). The district court has not granted an extension of the appeal period, *see* Rule 4(b), and this court is not empowered to do so, *see* Fed. R. App. P. 26(b).

Appendix B

CALVIN BUFFINGTON, Petitioner, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION

2017 U.S. Dist. LEXIS 55688

Case No. 16 C 8632

April 12, 2017, Decided

April 12, 2017, Filed

Editorial Information: Prior History

United States v. Buffington, 501 Fed. Appx. 560, 2013 U.S. App. LEXIS 2400 (7th Cir. Ill., 2013)

Counsel For United States of America, Plaintiff: Chicago, Steven Jerome Dollear, United States Attorney's Office (NDIL - Chicago), Chicago, IL.

For Calvin Buffington, Defendant: Amanda Nicole Graham, LEAD ATTORNEY, Federal Defender Program, Chicago, IL.

Judges: Harry D. Leinenweber, United States District Judge.

Opinion

Opinion by: Harry D. Leinenweber

Opinion

MEMORANDUM OPINION AND ORDER

Petitioner Calvin Buffington's ("Buffington") Motion for Relief under 18 U.S.C. § 3582(c)(2) [ECF No. 1] is denied.

I. BACKGROUND

This case raises the question of what to do when a defendant's Presentence Investigation Report ("PSR") adopted by the Court in sentencing turns out to be internally inconsistent. The answer matters for Buffington because, if one drug quantity from the PSR is used as the factual basis for his original sentence, then he is eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2). But if another, irreconcilably different drug quantity from the same report is used, then his sentence must stand as is.

To begin near the beginning, in 2011, this Court sentenced Buffington to a prison term of 238 months for his role in running a wholesale drug distribution ring. See, **United States v. Buffington**, No. 07-CR-00410, ECF No. 1006 (Judgment) (N.D. Ill. Mar. 18, 2011). Evidence before the Court established that Buffington was the leader of the enterprise and that his scheme suckled in the people closest to him, all of whom were charged and sentenced as participants in the organization. Buffington's co-conspirators included his mother, who raised him and his siblings in difficult circumstances; his brother, whom Buffington knew to be a crack addict; his cousins; a girlfriend, a college buddy, and various others. (Among the uncharged individuals were the mothers of Buffington's three children, whom the Government said Buffington used to funnel the illicit funds of his criminal enterprise.)