

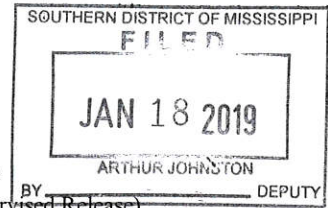
APPENDIX 1

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA
v.

Leonard Lashunn Bradley

Judgment in a Criminal Case(For **Revocation** of Probation or Supervised Release)

Case No. 1:09cr7LG-JMR-001

USM No. 15181-043

Ellen Allred

Defendant's Attorney

THE DEFENDANT:

- ☒ admitted guilt to violation of condition(s) Mandatory Condition of the term of supervision.
- ☐ was found in violation of condition(s) count(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

| <u>Violation Number</u> | <u>Nature of Violation</u> | <u>Violation Ended</u> |
|-------------------------|---|------------------------|
| Mandatory Condition | The defendant shall not commit another federal, state or local crime. On August 21, 2018, the defendant was arrested by the Moss Point (MS) Police Department and was charged with Child Pornography. This case is still pending (18-080130). | 08/21/2018 |

The defendant is sentenced as provided in pages 2 through 2 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 1305Defendant's Year of Birth: 1981City and State of Defendant's Residence:
Moss Point, MS

01/16/2019

Date of Imposition of Judgment

Signature of Judge

The Honorable Louis Guirola Jr.

U.S. District Judge

Name and Title of Judge

Date

DEFENDANT: Leonard Lashunn Bradley
CASE NUMBER: 1:09cr7LG-JMR-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Twenty-four (24) months, to be served consecutive to any state sentence that may be imposed in pending MPPD Case #18-080130.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends designation to an institution closest to his home for which he is eligible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

APPENDIX 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

CAUSE NO. 1:09CR7-LG-JMR-1

LEONARD LASHUNN BRADLEY

**ORDER DENYING DEFENDANT'S MOTION FOR
PERMISSION TO FILE OUT OF TIME APPEAL**

BEFORE THE COURT is the [61] Motion for Permission to File Out of Time Appeal filed by Leonard L. Bradley. After reviewing the Motion, the record in this matter, and the applicable law, the Court finds that the Motion should be denied.

BACKGROUND

Bradley pled guilty to one count of possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(A). On September 28, 2009, the Court sentenced him to 140 months of imprisonment and five years of supervised release. On January 3, 2012, the Court reduced Bradley's sentence to 120 months imprisonment pursuant to the Fair Sentencing Act of 2010 and 18 U.S.C. § 3582(c)(2). Bradley was released from custody on October 6, 2017, but he violated the terms of his supervised release when he was arrested by the Moss Point Police Department and charged with child pornography-related offenses. On January 18, 2019, the Court imposed a sentence of twenty-four months imprisonment to be served consecutive to any state sentence that may be imposed in the Moss Point Police Department case. On April 12, 2019, Bradley filed a pro se

Motion to Reduce Sentence pursuant to Section 404 of the First Step Act. On May 1, 2019, this Court entered an [59] Order denying Bradley's Motion because he is ineligible for relief under the First Step Act. The Office of the Federal Public Defender filed the present Motion for Permission to File Out of Time Appeal on Bradley's behalf on May 20, 2019, asserting that the appropriate person in the Federal Public Defender's Office did not receive notice that Bradley had filed a Motion under the First Step Act.¹

DISCUSSION

A criminal defendant's notice of appeal must be filed within fourteen days after entry of the order being appealed. Fed. R. App. P. 4(b)(1)(A).

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).

Fed. R. App. P. 4(b)(4). The lack of notice to the appropriate person in the Federal Public Defender's Office does not constitute excusable neglect. Furthermore, no explanation has been given as to why Bradley could not file a timely pro se notice of

¹ The Federal Public Defender's Office has been appointed by Administrative Order

to represent any defendant previously determined to have been entitled [to] appointment of counsel, or who was previously represented by retained counsel and is presently indigent, to determine whether the defendant may qualify to seek reduction of sentence and to present any motions or applications for reduction of sentence in accordance with Section 404 of the First Step Act of 2018.

(Appendix 1 to Mot., ECF No. 61-1.)

appeal. Finally, any appeal would be futile in this case, because Bradley clearly does not qualify for relief under the First Step Act for the reasons stated in this Court's previous [59] Order. Therefore, Bradley has not demonstrated either good cause or excusable neglect for failing to timely file a notice of appeal.

IT IS, THEREFORE, ORDERED AND ADJUDGED that [61] Motion for Permission to File Out of Time Appeal filed by Leonard L. Bradley is **DENIED**.

SO ORDERED AND ADJUDGED this the 6th day of June, 2019.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX 3

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-60402
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 31, 2019
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LEONARD LASHUNN BRADLEY,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:09-CR-7-1

Before KING, DENNIS, and WILLETT, Circuit Judges.

PER CURIAM:*

Leonard Lashunn Bradley appeals the denial of his motion for an extension of time in which to file a notice of appeal. In January 2019, Bradley was on supervised release imposed as part of his sentence for a 2009 conviction for trafficking in cocaine base. He admitted violating conditions of supervised release by being arrested by local police for possessing child pornography. His supervised release was revoked, and he was sentenced to 24 months in prison.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Bradley sought a reduction of the revocation sentence based on § 404 of the First Step Act of 2018, 124 Stat. 2372. The district court denied the motion on the grounds that the First Step Act did not permit a further reduction because Bradley's sentence was previously reduced under the Fair Sentencing Act of 2010 and that the First Step Act does not allow the reduction of a sentence imposed on revocation of supervised release.

Bradley had been proceeding pro se and did not file a notice of appeal from the denial of a sentence reduction. He was still proceeding pro se when the Federal Public Defender (FPD) appeared and filed a notice of appeal on his behalf five days after the appeal period expired. According to the FPD, the Assistant FPD handling First Step Act cases did not receive notice of Bradley's motion until the appeal period had expired, although Assistant FPDs at another Mississippi office received timely notice. The district court denied the motion for an extension of time, and the appeal of that denial is before us.

A notice of appeal in a criminal case must be filed within 14 days of the entry of the order being appealed. FED. R. APP. P. 4(b)(1)(A). However, if the district court finds "excusable neglect or good cause," it may "extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the [14-day period time]." FED. R. APP. P. 4(b)(4). A ruling on excusable neglect is reviewed for an abuse of discretion under the standard set forth in *Pioneer Inv. Services, Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 395-97 (1993). *United States v. Clark*, 51 F.3d 42, 43-44 & n.5 (5th Cir. 1995). A district court abuses its discretion by making a legal error, basing its decision on a clearly erroneous assessment of evidence, or by failing to consider factors that it is required by law to examine. *United States v. Larry*, 632 F.3d 933, 936 (5th Cir. 2011). Assessing good cause is an equitable matter in which the following factors are relevant: whether the appealing party acted in good faith,

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the length of the delay, the cause of the delay, the risk of prejudice to the opposing party, and the potential impact on judicial proceedings. *See Pioneer*, 507 U.S. at 395; *Clark*, 51 F.3d at 44.

The district court held that a “lack of notice to the appropriate person in the Federal Public Defender’s Office does not constitute excusable neglect,” and that “no explanation has been given as to why Bradley could not file a timely pro se notice of appeal.” The court also noted that an appeal would be futile for the reasons given in denying a sentence reduction.

While the FPD apparently acted in good faith to try to preserve Bradley’s appeal rights by filing its motion only five days after the appeal period expired, other factors support the district court’s ruling. No reason was offered for Bradley’s failure to file a pro se notice of appeal, and his pro se status did not excuse him from complying with relevant procedural rules. *See Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (citing *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975)). Otherwise, the delay resulted from a failure of communication within the FPD’s office, which the FPD acknowledges but does not defend or explain. Nothing suggests that Bradley was relying on the FPD to file a notice of appeal, but regardless, “*Pioneer* rejects the notion that excusable neglect can be based on the fact that the default in question was attributable to counsel rather than to the represented party.” *Clark*, 51 F.3d at 44 n.6.

While those factors sufficiently show that the district court did not abuse its discretion, we also note that the express language of the relevant legislative acts indicates that an appeal from the denial of Bradley’s motion for a sentence reduction would be futile. The First Step Act expressly forbids a court from entertaining a motion to reduce a sentence that was “previously reduced in accordance with . . . sections 2 and 3 of the Fair Sentencing Act.” First Step

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Act § 404(c), 132 Stat. 5194, *quoted in United States v. Hegwood*, 934 F.3d 414, 416 (5th Cir.), *cert. denied*, 140 S. Ct. 285 (2019). Bradley was ineligible for a further reduction because his sentence was reduced in 2012 under § 2 of the Fair Sentencing Act, which reduced the penalties for crimes involving cocaine base. *See* Fair Sentencing Act § 2, 124 Stat. 2372. As a result, any prejudice to Bradley resulting from the denial of an appeal would be illusory, while allowing a futile appeal would result in prejudice to the Government and be a waste of judicial resources. *See United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000) (declining to remand a case for a good-cause determination because allowing an untimely appeal from the denial of a 18 U.S.C. § 3582 motion would be futile).

The district court's order denying an out-of-time appeal is AFFIRMED. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006) (affirming a district court's sua sponte denial of an extension under Rule 4(b)(4)).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60402
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 31, 2019

Lyle W. Cayce
Clerk

D.C. Docket No. 1:09-CR-7-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

LEONARD LASHUNN BRADLEY,

Defendant - Appellant

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

Before KING, DENNIS, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.