

Appendix 1

May 2, 2019 Judgment

United States Court of Appeals For the First Circuit

No. 18-2226

LISA BIRON,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Howard, Chief Judge,
Torruella and Kayatta, Circuit Judges.

JUDGMENT

Entered: May 2, 2019

Since the government was a party to the habeas proceeding, appellant had 60 days from the entry of judgment to appeal that proceeding and another 30 days after to seek an extension of the time to appeal. See F.R.A.P. 4(a)(5)(A) (a district court may extend the time for filing a notice of appeal if, inter alia, "a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires"). Since her motion for an extension of time to file an appeal was filed after this period, it was properly denied.

Affirmed. 1st Cir. Loc. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Lisa Biron
Seth R. Aframe

Appendix 2

November 12, 2020

United States Court of Appeals For the First Circuit

No. 18-2226

LISA BIRON,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Howard, Chief Judge,
Lynch, Thompson, Kayatta
and Barron, Circuit Judges.

ORDER OF COURT

Entered: November 12, 2020

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Lisa Biron
Seth R. Aframe

Appendix 3

Relevant Statutory Provision
Title 28 USC § 2253
Title 28 USC § 2255

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 [28 USCS § 2255] before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 USCS § 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

(June 25, 1948, ch 646, 62 Stat. 967; May 24, 1949, ch 139, § 113, 63 Stat. 105; Oct. 31, 1951, ch 655, § 52; 65 Stat. 727; April 24, 1996, P.L. 104-132, Title I, § 102, 110 Stat. 1217.)

§ 2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may

appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 [28 USCS § 2244] by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

HISTORY:

Act June 25, 1948, ch 646, 62 Stat. 967; May 24, 1949, ch 139, § 114, 63 Stat. 105; April 24, 1996, P. L. 104-132, Title I, § 105, 110 Stat. 1220; Jan. 7, 2008, P. L. 110-177, Title V, § 511, 121 Stat. 2545.

Appendix 4

District Court's Nov. 29, 2018 Order and
Government's Nov. 28, 2018 Response

Orders on Motions**1:16-cv-00108-PB Biron v. USA****CASE CLOSED on 10/02/2017****ADMIN,APPEAL,CLOSED****U.S. District Court****District of New Hampshire****Notice of Electronic Filing**

The following transaction was entered on 11/29/2018 at 10:17 AM EST and filed on 11/29/2018

Case Name: Biron v. USA

Case Number: 1:16-cv-00108-PB

Filer:

WARNING: CASE CLOSED on 10/02/2017

Document Number: No document attached

Docket Text:

ENDORSED ORDER denying [17] Motion to Extend Time to file an appeal. Text of Order: I deny the motion for the reasons set forth in the government's response. So Ordered by Judge Paul J. Barbadoro.(vin)

1:16-cv-00108-PB Notice has been electronically mailed to:

Charles J. Keefe keefe@wbdklaw.com, hackney@wbdklaw.com

Seth R. Aframe seth.aframe@usdoj.gov, maryellen.mcmahon@usdoj.gov,
USANH.ECFCivil@usdoj.gov, USANH.ECFCrimal@usdoj.gov, USANH.ECFDocket@usdoj.gov

1:16-cv-00108-PB Notice, to the extent appropriate, must be delivered conventionally to:

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

LISA BIRON)
)
v.) 1:16-cv-108-PB
)
UNITED STATES OF AMERICA)

UNITED STATES' RESPONSE TO DEFENDANT'S
MOTION TO EXTEND NOTICE OF APPEAL PERIOD

This Court denied the defendant's motion for § 2255 relief in October 2017. A year later, the defendant filed a motion for this Court to extend the time for her to file a notice of appeal based on excusable neglect. The Court does not have the power to grant this extension. Under Federal Rule Appellate Procedure 4(a)(5), the defendant must file the motion to extend time within 30 days of the running of the notice of appeal period. The defendant had 60 days to file a notice of appeal because the United States is a party. Fed. R. App. P. 4(a)(1)(B). The defendant did not file her motion to extend within 30 days of the expiration of this 60 day period. Therefore, this Court should deny the defendant's motion to extend the notice of appeal period.

Pruitt v. Metcalf & Eddy, Inc., 2006 WL 760279, at *1 (S.D.N.Y. 2006).

Dated: November 28, 2018

Respectfully submitted,
SCOTT W. MURRAY
United States Attorney

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