

NOT RECOMMENDED FOR PUBLICATION

No. 22-5611

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jan 27, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) KENTUCKY
 RAKIM MOBERLY,)
)
 Defendant-Appellant.)
)
)

ORDER

Before: WHITE, MURPHY, and DAVIS, Circuit Judges.

This matter is before the court upon a motion by the government to dismiss the appeal.

The district court entered an order denying Rakim Moberly's motion for compassionate release on June 21, 2022. The 14-day period for filing a notice of appeal as to that order expired on July 5, 2022. Fed. R. App. P. 4(b)(1)(A); *see United States v. Payton*, 979 F.3d 388, 389–90 (6th Cir. 2020) (order). Moberly's notice of appeal, postmarked July 13, 2022, reached in the district court on July 19, 2022.

The government filed a motion to dismiss for Moberly's failure to file a timely notice of appeal. However, when a criminal defendant files a notice of appeal "after the fourteen-day appeal period but within the next thirty days" and the district court finds "excusable neglect or good cause" pursuant to Rule 4(b)(4), it may treat the notice of appeal as a request for an extension of

time to file an appeal. *Payton*, 979 F.3d at 390. So by an earlier order, we deferred ruling on the government's motion to dismiss and remanded for the district court to determine whether Moberly's untimely filing was due to excusable neglect or good cause. On remand, the district court determined that Moberly had not demonstrated that circumstances beyond his control affected his ability to file a timely notice. The district court therefore denied his request for an extension.

The deadline for a defendant to file a notice of appeal under Rule 4(b)(1)(A) is not jurisdictional. *See Payton*, 979 F.3d at 390; *United States v. Brown*, 817 F.3d 486, 489 (6th Cir. 2016); *United States v. Gaytan-Garza*, 652 F.3d 680, 681 (6th Cir. 2011) (per curiam). But it is a mandatory claims-processing rule; if the government raises the issue of timeliness, we must enforce the deadline. *See Payton*, 979 F.3d at 390; *Gaytan-Garza*, 652 F.3d at 681. The government has properly raised the timeliness issue by filing a motion to dismiss.

Moberly's failure to file a timely notice of appeal deprives this court of jurisdiction. It is therefore ordered that the government's motion to dismiss is **GRANTED** and this appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk