

FILED: February 22, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4591
(2:22-cr-00146-EWH-RJK-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

NICHOLAS BUTLER

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

App. A

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NICHOLAS BUTLER,

Defendant - Appellant.

O R D E R

Nicholas Butler seeks to appeal his sentence. The Government has moved to dismiss the appeal as untimely.

In criminal cases, the defendant must file the notice of appeal within 14 days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to 30 days to file a notice of appeal. Fed. R. App. P. 4(b)(4).

Although the appeal period in a criminal case is not a jurisdictional provision, but rather a claim-processing rule, *United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009), “[w]hen the Government promptly invokes the rule in response to a late-filed criminal appeal, we must dismiss,” *United States v. Oliver*, 878 F.3d 120, 123 (4th Cir. 2017).

The district court entered judgment on July 20, 2023. Butler filed the notice of appeal on September 15, 2023. Because Butler failed to file a timely notice of appeal or to obtain an extension of the appeal period and the Government has promptly invoked the appeal’s untimeliness, *see* 4th Cir. R. 27(f)(2), we grant the Government’s motion to dismiss the appeal.*

Entered at the direction of the panel: Judge Niemeyer, Judge Heytens, and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk

* Butler asserts that his plea counsel rendered ineffective assistance by ignoring his request to file a timely appeal. Because evidence of counsel’s alleged “ineffectiveness does not conclusively appear on the face of the record,” this claim “should be raised, if at all, in a motion under 28 U.S.C. § 2255.” *United States v. Barnett*, 48 F.4th 216, 222 n.3 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 823 (2023).