

January 3, 2011

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MERLE ALLISON,

Defendant - Appellant.

No. 10-1484

(D.C. No. 1:10-CR-00213-CMA-1)

ORDER

Before **TACHA, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.

Defendant Merle Allison appeals the judgment entered by the district court on September 29, 2010 in his criminal case.

Under Fed. R. App. P. 4(b)(1)(A)(i), the fourteen-day deadline for filing a notice of appeal in this criminal case expired on October 13, 2010. Defendant filed a notice of appeal on October 19, 2010, which was six days past the filing deadline.

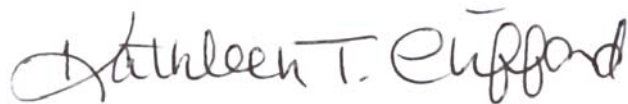
Although non-compliance with the time limit in Fed. R. App. P. 4(b)(1)(A) is not considered jurisdictional, the United States has properly raised the timeliness issue by filing a motion requesting dismissal of this appeal. “[T]he time bar in Rule 4(b) must be enforced by this court when properly invoked by the government.” *United States v.*

Mitchell, 518 F.3d 740, 744 (10th Cir. 2008) (quoting *United States v. Garduno*, 506 F.3d 1287, 1290-91 (10th Cir.2007)).

In response to the motion to dismiss, Defendant argues that the case should be remanded for the limited purpose of allowing the district court to make a determination under Fed. R. App. P. 4(b)(4) as to whether “excusable neglect” or “good cause” exists to justify the grant of an extension of time to file an appeal. However, Defendant did not file a Rule 4(b)(4) motion in the district court by the November 12, 2010 deadline, and the notice of appeal does not contain “recognition” by Defendant of a “lateness problem” such that it could be construed as a Rule 4(b)(4) motion. *See Jenkins v. Burtzloff*, 69 F.3d 460, 463 (10th Cir.1995).

Accordingly, the United States’ motion to dismiss is **GRANTED**. The appeal is **DISMISSED**.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in dark ink, reading "Kathleen T. Clifford". The signature is written in a cursive, flowing style with a large initial 'K'.

Kathleen T. Clifford
Attorney - Deputy Clerk