

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 28, 2011

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN CARLOS GARCIA,

Defendant - Appellant.

No. 11-3352
(D.C. No. 5:07-CR-40069-MLB-1)

ORDER

Before **KELLY, O'BRIEN**, and **HOLMES**, Circuit Judges.

Defendant Juan Carlos Garcia appeals the district court's judgment entered in this criminal case. Because the notice of appeal was filed untimely, we dismiss the appeal.

Under the procedural rules in effect at the time the final judgment was entered, a notice of appeal in a criminal case had to be filed within 10 days after entry of the judgment. Fed. R. App. P. 4(b)(1)(A)(i) (amended Dec. 1, 2009). The timeliness requirement of Rule 4(b)(1)(A) is an inflexible claim processing rule. United States v. Garduño, 506 F.3d 1287, 1290-91 (10th Cir. 2007). Although the time limitation of Rule 4(b) is not jurisdictional, the court in certain circumstances may raise the issue *sua sponte* because the rule "implicates important interests beyond those of the parties." United

States v. Mitchell, 518 F.3d 740, 750 (10th Cir. 2008). For example, the court may raise timeliness in a criminal case if the delay in filing the notice of appeal has been “inordinate.” Id.

Here, the district court’s final judgment was entered on the district court docket on August 6, 2008. The notice of appeal should have been filed on or before August 20, 2008. The defendant filed his notice of appeal on November 21, 2011, more than three years after the deadline expired. We find that the notice of appeal was filed inordinately late. Therefore, we may raise the issue of timeliness *sua sponte*.

APPEAL DISMISSED.

Entered for the Court,
ELISABETH A. SHUMAKER, Clerk,

A handwritten signature in cursive script that reads "Lara Smith".

by: Lara Smith
Counsel to the Clerk