

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 6, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PETER ANTONIO TUBENS,

Defendant - Appellant.

No. 18-4167
(D.C. No. 2:11-CR-00579-TC-1)
(D. Utah)

ORDER

Before **BRISCOE**, **HARTZ**, and **MORITZ**, Circuit Judges.

This is a direct criminal appeal filed almost two years after the most recent district court order denying a motion to reduce sentence filed by the defendant.

In a criminal appeal, the defendant's notice of appeal is to be filed within 14 days of entry of the order being appeals. *See* Fed. R. App. P. 4(b)(1)(A). This rule is an "inflexible claim-processing rule[], which unlike a jurisdictional rule, may be forfeited if not properly raised by the government." *United States v. Garduno*, 506 F.3d 1287, 1291 (10th Cir. 2007) (internal quotation omitted).

However, "[b]ecause Rule 4(b) implicates important interests beyond those of the parties, we hold that this court may raise its time bar sua sponte. This power, however, is limited and should not be invoked when judicial resources and

administration are not implicated and the delay has not been inordinate.” *United States v. Mitchell*, 518 F.3d 740, 750 (10th Cir. 2008).

Here, the appeal is inordinately late and it is not in the interests of judicial economy to consider the appeal, especially considering that the defendant has already been denied relief after filing several post-conviction motions.

APPEAL DISMISSED. The mandate shall issue forthwith.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

by: Ellen Rich Reiter
Jurisdictional Attorney