

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 22, 2019

**Elisabeth A. Shumaker
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 19-1346

KENNETH ROYAL WHEELER,

Defendant - Appellant.

ORDER

Before **LUCERO, HARTZ**, and **EID**, Circuit Judges.

Pro se defendant Kenneth Royal Wheeler appeals the district court's July 9, 2019 order denying his motion to seal and expunge his criminal record. The government filed a motion to dismiss the appeal because the notice of appeal was not filed timely. The defendant was provided an opportunity to respond to the motion to dismiss but did not file a response. Upon consideration of the government's motion and the record, the motion to dismiss is granted.

A notice of appeal from an order entered in a criminal case must be filed within 14 days after entry of the order being appealed. Fed. R. App. P. 4(b)(1)(A)(i); *United States v. Randall*, 666 F.3d 1238, 1240 (10th Cir. 2011) (14-day limit to appeal applies to post-convictions motions in criminal cases). While not jurisdictional, the timeliness requirement of Rule 4(b) is an inflexible claim processing rule. *United States v. Garduño*,

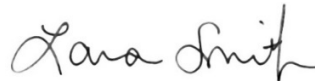
506 F.3d 1287, 1290-91 (10th Cir. 2007). And although the defendant is proceeding pro se, he must comply with the same procedural requirements that govern other litigants. *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

In this case, the order being appealed was entered July 9, 2019. The deadline to file a notice of appeal from the order was July 23, 2019. The notice of appeal was not filed until September 13, 2019, more than seven weeks after the filing deadline expired. The defendant did not seek an extension of time to appeal, and the time within which to seek such relief has expired. *See* Fed. R. App. P. 4(b)(4).

The government filed a motion in this court correctly arguing that the notice of appeal was untimely filed. The defendant did not submit any argument to the contrary, nor can we conceive of any. Accordingly, the government's motion to dismiss the appeal must be granted. *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir. 2008) (“[T]he time bar in Rule 4(b) must be enforced by this court when properly invoked by the government.” (citing *Garduño*, 506 F.3d at 1290-91)).

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Lara Smith".

by: Lara Smith
Counsel to the Clerk