

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 29, 2023

**Christopher M. Wolpert
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGEL PLAZA,

Defendant - Appellant..

No. 23-2087
(D.C. No. 2:23-CR-00041-KG-1)
(D. N.M.)

ORDER

Before **BACHARACH, BRISCOE**, and **EID**, Circuit Judges.

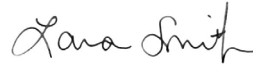
Defendant Angel Plaza filed a pro se notice of appeal from the district court's judgment of conviction and sentence. The government filed a motion to dismiss the appeal because the notice of appeal was not filed timely. Through his appointed counsel, the defendant filed a response to the government's motion to dismiss. Upon consideration, the government's motion is granted, and this appeal is dismissed.

A notice of appeal in a criminal case must be filed within 14 days after entry of the judgment. Fed. R. App. P. 4(b)(1)(A)(i). In this case, judgment was entered on the district court docket on May 24, 2023. To have been timely, the notice of appeal should have been filed on or before June 7, 2023. The document construed as a pro se notice of appeal was filed on June 16, 2023, nine days after the deadline expired.

The timeliness requirement of Rule 4(b) is not jurisdictional but is instead an inflexible claim processing rule. *United States v. Garduño*, 506 F.3d 1287, 1290-91 (10th Cir. 2007). “[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) (citing *Garduño*, 506 F.3d at 1290-91)). The government filed a motion to dismiss this appeal correctly arguing that the notice of appeal was untimely filed. The appellant’s response to the motion to dismiss concedes that the notice of appeal was filed late and that he could not demonstrate compliance with the prison mailbox rule. *See* Fed. R. App. P. 4(c). Under the circumstances presented here, the government’s motion to dismiss this appeal as untimely is granted.

APPEAL DISMISSED.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



by: Lara Smith
Counsel to the Clerk