

CASES ADJUDGED
IN THE
SUPREME COURT OF THE UNITED STATES
AT
OCTOBER TERM, 1953.

LEMKE *v.* UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 109. Decided October 12, 1953.

Petitioner was convicted of a crime and sentenced to imprisonment. He filed his notice of appeal the next day; but judgment was not entered until several days later. *Held*: Though Rule 37 (a)(2) of the Federal Rules of Criminal Procedure provides that such appeals may be taken "within 10 days after entry of the judgment," the irregularity in noting the appeal prematurely should have been disregarded under Rule 52 (a), as it did not "affect substantial rights," and the appeal should not have been dismissed. Pp. 325-326.

203 F. 2d 406, reversed.

Bailey E. Bell for petitioner.

Acting Solicitor General Davis, Assistant Attorney General Olney, Beatrice Rosenberg and Robert G. Maysack for the United States.

PER CURIAM.

This case is here on a petition for certiorari to the Court of Appeals for the Ninth Circuit, which dismissed an appeal as premature. Rule 37 (a)(2) of the Federal Rules of Criminal Procedure provides that "An appeal by a defendant may be taken within 10 days after entry of the judgment or order appealed from"

On March 10, 1952, petitioner was sentenced to six months in jail after a jury verdict finding him guilty of violating § 65-5-81 of the Alaska Compiled Laws Ann., 1949. On March 11, 1952, petitioner filed his notice of appeal. The judgment, however, was not entered until March 14, 1952. Since no notice of appeal was filed after that time, the appeal was dismissed as premature, Judge Pope dissenting.

The notice of appeal filed on March 11 was, however, still on file on March 14 and gave full notice after that date, as well as before, of the sentence and judgment which petitioner challenged. We think the irregularity is governed by Rule 52 (a) which reads "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

Accordingly we grant the petition for certiorari, reverse the judgment below, and remand the case for further proceedings consistent with this opinion.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.