

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

Case No. 07-20099-04-JWL

Yehia Hassen,

Defendant.

MEMORANDUM & ORDER

On November 12, 2020, this court denied defendant Yehia Hassen's motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). Defendant now seeks to appeal the court's November 12, 2020 memorandum and order denying compassionate release and, toward that end, he has moved to file a notice of appeal out of time (doc. 1157). Because the court does not have the authority to grant the motion to file an out-of-time appeal, the motion is dismissed for lack of jurisdiction.

A motion for compassionate release under § 3582(c)(1) is part of the criminal proceeding, so an appeal from a decision on such a motion comes under the rules governing appeals in criminal cases. *See United States v. Heath*, ___ Fed. Appx. ___, 2021 WL 840911, at *2-3 (10th Cir. Mar. 5, 2021). Those rules provide that a defendant in a criminal case has 14 days from entry of an order to file a notice of appeal. *See Fed. R. App. P. 4(b)(1)(A)(i)*. Thus, defendant's notice of appeal had to be filed by November 26, 2020 or, more accurately, by November 27, 2020 because November 26, 2020 was a legal holiday. *See Fed. R. App. P. 26(a)(1)(C)* (“[I]f the last day is a

Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.”).

While the court could have extended that 14-day period, “its authority to do so is strictly limited.” *United States v. Verdin-Garcia*, 707 Fed. Appx. 559 (10th Cir. Dec. 20, 2017). “Upon a finding of excusable neglect or good cause,” the district court may extend the time to file a notice of appeal for only an additional 30 days. *Id.* (citing Fed. R. App. P. 4(b)(4)). Thus, the court could have extended the time for defendant to file his notice of appeal to no later than December 27, 2020, although the time for appeal would then have been extended to December 28, 2020 because December 27, 2020 was a Sunday. *See* Fed. R. App. P. 26(a)(1)(C).

Because defendant seeks to file a notice of appeal more than four months after the expiration of the time for filing a notice of appeal set forth in Rule 4(b)(1), the court must dismiss the motion for lack of jurisdiction.

IT IS THEREFORE ORDERED BY THE COURT THAT defendant’s motion to file a notice of appeal out of time (doc. 1157) is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this 5th day of May, 2021, at Kansas City, Kansas.

s/ John W. Lungstrum

John W. Lungstrum
United States District Judge