

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**TYREECE F. GRAY,**

**Defendant.**

**Case No. 11-20131-01-CM**

**MEMORANDUM AND ORDER**

This closed case is before the court on defendant Tyreece F. Gray's Motion for an Order Granting Leave to File Notice of Appeal Out of Time (Doc. 82). Defendant seeks leave to appeal this court's order denying his request for a reduction in his sentence. That order was dated March 30, 2015. Defendant filed his motion for leave to file an appeal, as well as his notice of appeal, on May 26, 2015. Defendant claims that he did not receive the court's order until after the time to file an appeal had passed.

Fed. R. App. P. 4(b)(1) imposes requirements for timely filing appeals in criminal cases. The relevant portion provides that a defendant must file a notice of appeal within fourteen days of the entry of the order being appealed. If the time to appeal has expired, the court may extend the time to appeal upon a showing of good cause or excusable neglect, but not to exceed thirty days from the expiration of the time otherwise prescribed by this Rule 4(b). Fed. R. App. P. 4(b)(4). This rule, however, is not jurisdictional; instead, it is an "inflexible claim-processing rule." *United States v. Garduno*, 506 F.3d 1287, 1291 (10th Cir. 2007). This means that the rule only assures relief when the government raises it. *See id.* The rule's time limitation may be waived. *See id.*

Here, the court ordered the government to respond to defendant's motion. The government timely responded, but took no position on defendant's request. The court therefore finds that defendant has shown good cause to extend the time to appeal beyond the thirty days referenced in Fed. R. App. P. 4(b)(4). Defendant took prompt action to appeal the court's order once he received it. Moreover, the additional time requested is not significant. And if—as defendant claims—the prison mail handlers are to blame for defendant not timely receiving the court's order, then granting defendant additional time is a just result. The court grants defendant's motion.

**IT IS THEREFORE ORDERED** that defendant Tyreece F. Gray's Motion for an Order Granting Leave to File Notice of Appeal Out of Time (Doc. 82) is granted.

Dated this 27th day of July, 2015, at Kansas City, Kansas.

s/ Carlos Murguia \_\_\_\_\_  
**CARLOS MURGUIA**  
**United States District Judge**