

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

United States of America,

Plaintiff,

v.

Case No. 13-20123-JWL

Willie Lee Pittman,

Defendant.

MEMORANDUM & ORDER

In February 2014, defendant Willie Lee Pittman entered a plea of guilty to conspiracy to distribute and possess with intent to distribute more than 500 grams of cocaine. The court accepted the parties' Rule 11(c)(1)(C) plea agreement and, in May 2014, sentenced Mr. Pittman to 240 months of imprisonment followed by eight years of supervised release. This matter is presently before the court on Mr. Pittman's motion for leave to file an appeal out of time (doc. 36). The motion is denied.

Under Federal Rule of Appellate Procedure 4(b)(1)(A), a defendant's notice of appeal in a criminal case must be filed in the district court within 14 days after the later of: (i) the entry of either the judgment or the order being appealed; or (ii) the filing of the government's notice of appeal. The government did not file a notice of appeal and the judgment being appealed was entered on May 9, 2014. Under Federal Rule of Appellate Procedure 4(b)(4), the court may extend the time to file a notice of appeal upon a finding of excusable neglect or good cause for a period not to exceed 30 days from the expiration of the time otherwise prescribed by Rule 4(b).

The government has invoked Rule 4(b)(4) in response to Mr. Pittman's motion and, accordingly, the time bar must be enforced. *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir. 2008). Because Mr. Pittman seeks to file his notice of appeal more than three months after the entry of judgment, well outside the 30-day extension period contained in Rule 4(b)(4), the motion must be denied.¹

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Pittman's motion to file out of time appeal (doc. 36) is **denied**.

IT IS SO ORDERED.

Dated this 15th day of October, 2014, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge

¹ To the extent Mr. Pittman avers that his failure to file a timely notice of appeal was the fault of his trial counsel, that claim is more appropriately raised in the context of a § 2255 petition.