

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14-4682

UNITED STATES OF AMERICA

v.

TYSHAUN ST. VALLIER,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Crim. No. 2-07-cr-00613-002)
District Judge: Honorable Susan D. Wigenton

Submitted for Possible Dismissal as Untimely or Summary
Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
May 14, 2015

Before: RENDELL, CHAGARES and SCIRICA, Circuit Judges

(Opinion filed: June 11, 2015)

OPINION*

PER CURIAM

*This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Tyshaun St. Vallier, a federal prisoner proceeding pro se, appeals an order of the United States District Court for the District of New Jersey denying his motion for an extension of time to file a notice of appeal. We will affirm the judgment of the District Court.

In 2009, St. Vallier was convicted of importing 500 grams or more of cocaine into the United States and conspiracy to import 500 grams or more of cocaine. We affirmed the judgment of conviction and remanded for resentencing due to a procedural error by the District Court. United States v. St. Vallier, 404 F. App'x 651, 665 (3d Cir. 2010) (non-precedential). On remand, St. Vallier was sentenced to 204 months in prison. We affirmed. United States v. St. Vallier, 488 F. App'x 628, 634 (3d Cir. 2012) (non-precedential).

St. Vallier filed motions in District Court for a new trial pursuant to Federal Rule of Criminal Procedure 33, and for discovery. The District Court denied the motions on October 31, 2013. On February 18, 2014, St. Vallier filed a motion to reopen the time to file a notice of appeal. He asserted that he did not timely receive notice of the District Court's decision. St. Vallier then moved to amend his motion in order to state that he sought to reopen to the time to appeal pursuant to Federal Rule of Appellate Procedure 4(a)(6). The Government opposed reopening the time to appeal.

The District Court denied St. Vallier's motions. The District Court explained that Federal Rule of Appellate Procedure 4(b) applies to St. Vallier's case and that under that

rule it lacked authority to extend the time for filing a notice of appeal. This appeal followed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's interpretation of the appellate rule, and we review the denial of the requested extension for abuse of discretion. See Consolidated Freightways Corp. v. Larson, 827 F.2d 916, 918 (3d Cir. 1987).¹

The District Court did not err in denying St. Vallier's motions. As recognized by the District Court, Federal Rule of Appellate Procedure 4(b), applicable to appeals in criminal cases, governs St. Vallier's appeal of the denial of his Rule 33 and discovery motions. Under Rule 4(b)(1)(A), St. Vallier had 14 days, or until November 14, 2013, to appeal the District Court's October 31, 2013 order.

The District Court may extend the time to file a notice of appeal, but it may only do so for a period not to exceed 30 days from the expiration of the 14-day period, here December 14, 2013. Fed. R. App. P. 4(b)(4). St. Vallier's motion, filed on February 18, 2014, was too late. United States v. Vastola, 899 F.2d 211, 222 (3d Cir.), vacated on other grounds, 497 U.S. 1001 (1990).

¹The parties were initially notified that this appeal was subject to possible dismissal because the notice of appeal appeared to be untimely filed. The Government has advised us that it does not seek dismissal on this basis. We will not dismiss the appeal as untimely. The time requirements of Federal Rule of Appellate Procedure 4(b) are not jurisdictional and the Government has waived any contention that this appeal is untimely. See Virgin Islands v. Martinez, 620 F.3d 321, 327-29 (3d Cir. 2010).

St. Vallier asserted in District Court that he did not receive notice of the District Court's order until January 31, 2014. For substantially the reasons stated by the District Court, St. Vallier has not shown that the time to file his notice of appeal was tolled, thereby extending the time the District Court could afford him an extension of time.

Accordingly, because this appeal does not present a substantial question, we will summarily affirm the judgment of the District Court.