

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 12, 2013

Lyle W. Cayce
Clerk

No. 11-20786
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RHONDA FLEMING,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:07-CR-513-1

Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

Rhonda Fleming appeals from the district court's denial of her first motion for new trial. The Government argues that review of that denial is barred because Fleming's notice of appeal was untimely. *See* FED. R. APP. P. 4(b)(1)(A)(i); *United States v. Chagra*, 735 F.2d 870, 872 (5th Cir. 1984) (holding that an appeal from the denial of a motion for new trial based on newly discovered evidence must be filed in accordance with Rule 4(b)).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 11-20786

A district court may grant a defendant an additional 30 days in which to file a notice of appeal upon a showing of excusable neglect or good cause. FED. R. APP. P. 4(b)(4). Fleming's notice of appeal, mailed from the Carswell Federal Medical Center within this additional 30-day period, suffices as a motion for a finding on excusable neglect or good cause. *See United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984). This case is remanded to the district court for the limited purpose of determining whether excusable neglect or good cause entitles Fleming to an extension of time to file a notice of appeal.

REMANDED.