

January 24, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 03-10511  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS REEDY; JANICE REEDY,

Defendants-Appellants.

-----  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC Nos. 4:00-CR-54-1-Y  
4:00-CR-54-2-Y  
-----

Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Thomas and Janice Reedy appeal the sentences imposed following remand to the district court for resentencing. The Government argues that Janice Reedy's notice of appeal was untimely filed. Janice Reedy contends that the two appeals have been consolidated and that the notice of appeal is timely because it was filed within 10 days of the last entered judgment, which is the judgment against Thomas Reedy.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

A timely notice of appeal is a mandatory precondition to the exercise of appellate jurisdiction. United States v. Winn, 948 F.2d 145, 153 (5th Cir. 1991). Pursuant to FED. R. APP. P. 4(b)(1)(A)(i), the time for filing a notice of appeal runs from "the entry of either the judgment or the order being appealed." Because Janice Reedy is appealing from the judgment entered against her, her argument is without merit, and her notice of appeal is untimely.

A district court may grant a defendant an additional 30 days in which to file a notice of appeal upon a showing of good cause or excusable neglect. See FED. R. APP. P. 4(b)(4). Because Janice Reedy's notice of appeal was filed within 30 days of the time for filing a timely notice of appeal, it should be construed as a motion for an extension of time to file an appeal. See United States v. Golding, 739 F.2d 183, 184 (5th Cir. 1984).

Accordingly, the appeals are held in abeyance, and Janice Reedy's case is REMANDED to the district court for a finding under FED. R. APP. P. 4(b)(4). Id. Upon making the finding, the district court shall promptly return the case to this court for dismissal or further proceedings, as may be appropriate.

REMANDED; APPEALS HELD IN ABEYANCE PENDING REMAND.