

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 92-2574  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PATRICK P. FINNIGAN,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CR-H-90-0005-02  
- - - - -  
(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

The Government argues that this Court does not have jurisdiction because Finnigan did not file his notice of appeal within ten days of the entry of the order denying reconsideration of his motion for new trial. Finnigan argues that the late notice of appeal should be excused because his attorney received late notice of the order.

A notice of appeal from the denial of a motion for new trial in a criminal case must be filed within ten days of the entry of

---

\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

judgment. Fed. R. App. P. 4(b). A motion for reconsideration from the denial of a motion for new trial must be filed within ten days. United States v. Ramirez, 954 F.2d 1035, 1038 (5th Cir.), cert. denied, 112 S.Ct. 3010 (1992); United States v. Cook, 670 F.2d 46, 48 (5th Cir.), cert. denied, 456 U.S. 982 (1982). A notice of appeal from an order denying reconsideration of the denial of a motion for new trial must be filed within ten days. In an order dated April 20, 1992, in United States v. Finnigan, No. 90-2838, this Court advised Finnigan that should the district court deny his second motion for new trial, i.e., the affidavit/motion for reconsideration, he must file a notice of appeal within ten days.

Finnigan did not file his notice of appeal within ten days of the denial of the motion for reconsideration. The order was entered on June 17, 1992, and his notice of appeal was filed on July 8 when it was received by this Court. The tenth day was June 29. Finnigan's notice of appeal was untimely.

Finnigan contends that his attorney did not receive notice of the order until the end of June (he does not give an exact date) because the district court mailed it to his former address. He attaches as an exhibit a copy of the envelope showing that the notice was forwarded on June 23. He contends that his attorney filed the notice of appeal immediately upon receipt of the notice of entry of judgment.

Finnigan's argument appears to be an attempt to invoke Fed. R. App. P. 4(a)(6), which provides that if the district court finds that a party entitled to notice of entry of judgment did

not receive notice, the district court may, upon a motion filed within 180 days of the judgment or within 7 days of receipt of the notice, reopen the time for appeal for a period of 14 days. Finnigan would have had to file the required motion in the district court within 7 days of receipt of the notice of entry of judgment, which he allegedly received in late June of 1992. The record does not contain such a motion. This Court may not enlarge the time for filing a notice of appeal. Fed. R. App. P. 26(b).

This appeal is DISMISSED for lack of jurisdiction.