

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50449
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY JOSEPH CULLUM,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-88-CR-130(3)
- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This Court must examine the basis of its jurisdiction on its own motion if necessary. Mosely v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). Cullum's notice of appeal was not filed timely. See Fed. R. App. P. 4(b), 4(c), 25(a); see Houston v. Lack, 487 U.S. 266, 276, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988); United States v. Young, 966 F.2d 164, 165 (5th Cir. 1992).

However, Rule 4(b) allows the district court to grant an additional thirty days in which to file a notice of appeal upon a

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

showing of excusable neglect. The filing of an untimely notice of appeal within the thirty-day period is customarily treated by this Court in criminal cases as a motion for a determination whether excusable neglect entitled the defendant to an extension of time to appeal. See United States v. Golding, 739 F.2d 183, 184 (5th Cir. 1984). Cullum's notice of appeal was filed within thirty days of the expiration of the ten-day appeal period. We therefore remand the case to the district court for a determination whether defendant's untimely filing of the notice of appeal was due to excusable neglect.

Cullum's motion for release pending appeal is DENIED as moot.

REMANDED.