

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-50028  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL DEMONBREUN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-97-CR-23-7  
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June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

This court must examine the basis of its jurisdiction on its own motion if necessary. United States v. Lister, 53 F.3d 66, 68 (5th Cir. 1995). Fed. R. Crim. P. 4(b) requires that a notice of appeal by a defendant in a criminal case be filed within ten days of entry of judgment. The rule allows the district court to grant an additional 30 days in which to file the notice of appeal upon a showing of excusable neglect. This court customarily

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

treats the filing of an untimely notice of appeal within the 30-day period as a motion for a determination whether excusable neglect entitles the defendant to an extension of time to appeal. See United States v. Golding, 739 F.2d 183, 184 (5th Cir. 1984).

The district court's judgment from which Demonbreun has appealed was entered on December 11, 1997, and defendant, through counsel, filed his notice of appeal on December 23, 1997, one day late but within the 30-day period. See Fed. R. App. P. 4(b) & 26(a). 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. Upon making the determination, the district court shall return the case to this court for further proceedings or dismissal, as may be appropriate.

REMANDED.