

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

United States Court of Appeals
Fifth Circuit

FILED

December 8, 2010

Lyle W. Cayce
Clerk

No. 09-10408
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

AUBREY WALKER,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:06-CR-25-7

Before KING, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Aubrey Walker, federal prisoner # 35881-177, pleaded guilty to possession with the intent to distribute methamphetamine. She was sentenced to 151 months in prison. Walker now appeals the denial of her motion to reduce her sentence pursuant to 18 U.S.C. § 3582(c)(2). She avers that she was eligible for a reduction in her sentence following *United States v. Booker*, 543 U.S. 220 (2005).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 09-10408

Walker's untimely notice of appeal may be deemed a request for an extension of time within which to file her notice of appeal. *See* FED. R. APP. P. 4(b)(4); *see also United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984). Although the district court did not expressly make a finding of good cause or excusable neglect, the district court did grant Walker's motion for leave to proceed in forma pauperis on appeal, which served as an implicit finding of excusable neglect. *See, e.g., United States v. Lister*, 53 F.3d 66, 68 (5th Cir. 1995). As there is no jurisdictional impediment to reaching the merits of Walker's appeal, *United States v. Martinez*, 496 F.3d 387, 388-89 (5th Cir. 2007), we decline to dismiss it for failure to file a timely notice of appeal.

Booker does not apply to sentence reductions under § 3582(c)(2). *Dillon v. United States*, 130 S. Ct. 2683, 2691-94 (2010). Accordingly, the Government's motion for summary affirmance is GRANTED, the motions to dismiss and for an extension of time are DENIED, and the judgment of the district court is AFFIRMED.