

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit, held at
2 the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New
3 York, on the 10th day of June, two thousand sixteen.

4
5 PRESENT:

6 ROBERT D. SACK,
7 GERARD E. LYNCH,
8 *Circuit Judges,*
9 J. GARVAN MURTHA,*
10 *District Judge.*

11 _____
12
13 UNITED STATES OF AMERICA,

14 *Appellee,*

15
16
17 v.

15-1768

18
19 RYAN RUSSOW,

20 *Defendant-Appellant.*
21
22 _____
23

24 **FOR APPELLEE:**

Sarah P. Karwan, Marc H. Silverman, Assistant
United States Attorneys, for Deirdre M. Daly,
United States Attorney, District of Connecticut.

25
26

* The Honorable J. Garvan Murtha, of the United States District Court for the District of Vermont, sitting by designation.

1 **FOR DEFENDANT-APPELLANT:** Vito Castignoli, Milford, CT.

2

3 Appeal from a judgment of the United States District Court for the District of
4 Connecticut (Janet Bond Arterton, *J.*).

5 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,**
6 **AND DECREED** that this case is **DISMISSED**.

7 Defendant-Appellant’s notice of appeal was untimely under Federal Rule of
8 Appellate Procedure 4(b), which provides that “the district court may . . . extend the time to
9 file a notice of appeal for a period not to exceed 30 days from the expiration of the time
10 otherwise prescribed by this Rule 4(b).” Fed. R. App. P. 4(b)(4). The district court
11 extended Russow’s time to file a notice of appeal, but Russow did not file his notice of
12 appeal until 13 days after the expiration of his extended time.¹ Although “Rule 4(b) is not
13 jurisdictional,” we have made clear that “[w]hen the government properly objects to the
14 untimeliness of a defendant’s criminal appeal, Rule 4(b) is mandatory and inflexible.”
15 *United States v. Frias*, 521 F.3d 229, 234 (2d Cir. 2008). In its brief, the government
16
17

¹ We note that Russow’s notice of appeal was filed 68 days after the expiration of the time otherwise prescribed by Rule 4(b), more than double the time a district court can extend the time to file a notice of appeal under the rule. Given Russow’s failure to comply with even the extended deadline set by the district court, we need not decide whether the district court’s order purporting to extend the time to file a notice of appeal for longer than the 30 days specified in Fed. R. App. P. 4(b)(4) would support this Court’s consideration of the merits of the appeal over the government’s objection.

1 objected to Russow's failure to comply with Rule 4(b)'s mandatory time limits.

2 Accordingly, this appeal is **DISMISSED** as untimely.

3 FOR THE COURT:

4 Catherine O'Hagan Wolfe, Clerk