

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 3:75-CR-00026-F

UNITED STATES OF AMERICA,)
)
 v.)
)
 JEFFREY R. MacDONALD,)

ORDER

This matter is before the court on the Motion to Extend Time [DE-359] filed by Defendant Jeffrey MacDonald. Therein, MacDonald seeks additional time to file a notice of appeal of this court's August 8, 2014 Order [DE-356] denying his Motion Pursuant to the Innocence Protection Act of 2004, 18 U.S.C. § 3600 ("IPA"), for New Trial Based on DNA Testing Results and Other Relief [DE-176].

In support of the motion, Christine Mumma, Executive Director of the North Carolina Center on Actual Innocence, represents that she joined MacDonald's prior counsel, *pro bono*, solely to assist with his claim under the IPA, and her assistance was never intended to extend to an appeal. Mot. to Extend Time [DE-359] ¶ 1. She also states that she was terminated as counsel of record in this action after filing a Clarification of Notice of Appearance [DE-280] in September 2012. She acknowledges the court's order denying MacDonald's IPA motion was filed August 8, 2014, and that if Federal Rule of Appellate Procedure 4(b)(1) applies, the deadline for filing a notice of appeal has passed. *Id.* ¶ 5. She indicates, however, that she has been unable to discuss with MacDonald the possibility of appeal or obtaining counsel for the appeal, because MacDonald "has been under visitation and communication restrictions since shortly after the Court's Order denying his § 2255 claim was filed

in July 2014.” *Id.* at ¶ 4. She asserts she has discussed the motion for extension of time with the office of Assistant United States Attorney John Bruce. *Id.* ¶ 6. She requests, on MacDonald’s behalf, an extension of time to file a notice of appeal until September 22, 2014, pursuant to Federal Rule of Appellate Procedure 4(b)(4).

The Government opposes the motion, stating that although members of the United States Attorney’s Office had discussed with Mumma the possibility that she would file a motion for extension of time to file a “reply” to the court’s August 8, 2014, Order, no one in that office had discussed the possibility of filing a motion for extension of time to file a notice of appeal. Response [DE-360] ¶ 7. The Government also asserts that IPA motions are civil in nature, and therefore Federal Rule of Appellate Procedure 4(a), as opposed to 4(b), applies to any appeal filed by MacDonald. The Government submits that under Rule 4(a)(1)(B)(i), the deadline for MacDonald to file an appeal is October 7, 2014, and the motion for extension of time is unnecessary. The Government also requests that Ms. Mumma clarify her counsel status with respect to this case, in light of her alleged statements to the Government that she intended to withdraw.

In reply, Ms. Mumma states that she did not receive notice from this court of the August 8, 2014, Order. Reply [DE-361] ¶ 1. She again asserts that she did, in fact, discuss MacDonald’s request for an extension of time to file a notice of appeal with Leslie Cooley, Assistant United States Attorney. *Id.* ¶ 4. Ms. Mumma asserts that Ms. Cooley told her that the deadline for filing a notice of appeal had passed and that therefore the Government could not consent to an extension. *Id.* ¶ 5. According to Ms. Mumma, “[a]lthough the Government’s position in its response [DE-360] is inconsistent with its previous statements . . . Defendant is content to agree to the Government’s determination that the deadline for the Notice of Appeal is not until October 7, 2014.” *Id.* ¶ 6.

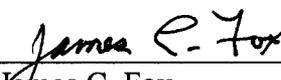
Accordingly, Ms. Mumma “respectfully requests that this Court clarify the deadline for Defendant to file a Notice of Appeal of this Court’s Order as October 7, 2014.” *Id.*

If motions under the IPA are considered civil in nature, as the Government contends, then the deadline for MacDonald to file a notice of appeal has not passed. *See* Fed. R. App. P. 4(a)(1)(B)(i). If, however, an IPA motion is considered criminal in nature, then the deadline has passed, and MacDonald must show excusable neglect or good cause to seek an extension of time. *See* Fed. R. App. P. 4(b)(4). The Fourth Circuit Court of Appeals has not addressed whether motions under the IPA are civil or criminal in nature for purposes of the appeal deadline.

Given that the parties now agree that the IPA motions are civil in nature, and that Federal Rule of Appellate Procedure 4(a)(1)(B)(i) provides the applicable deadline for filing a notice of appeal, MacDonald’s Motion to Extend Time [DE-359] is DENIED as moot.¹ MacDonald has until October 7, 2014, to file a notice of appeal of this court’s August 8, 2014, Order.²

SO ORDERED.

This the 16th day of September, 2014.



James C. Fox
Senior United States District Judge

¹ The court observes that the Fourth Circuit previously has determined that appeals periods are not jurisdictional in criminal cases. *United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009).

² The court also observes that Ms. Mumma is still listed as counsel of record in this action, and she will remain so until she files a motion to withdraw.