

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

CRIMINAL ACTION

v.

Case Number 3:15-CR-196-01(FLW)

**BOBBY BOYE a/k/a
“Bobby Ajiboye” a/k/a
“Bobby Aji-Boye”**

Defendant.

MOTION TO EXTEND TIME FOR FILING NOTICE OF APPEAL

COMES NOW the Defendant Bobby Boye motioning this Court for an order extending the time to file his notice of appeal under Fed. R.

App. P. 4(b)(4) and in support therefore states:

1. Pursuant to Federal Rule of Appellate Procedure 4(b)(4), a district court may upon finding either excusable neglect or good cause extend for up to 30 days the time for filing a notice of appeal.

2. Defendant respectfully requests an extension of 30 days in which to file his notice of appeal, which has been filed with this Court this same day and accompanies this motion.

3. The Judgment in a Criminal Case was entered in this case on October 15, 2015, and Defendant’s Notice of Appeal was filed today, November 16, 2015.

4. Defendant affirms in his accompanying Certification that immediately after the sentencing was imposed, he instructed the Public Defender representing him (K. Anthony Thomas, Esquire of the Office of the Federal Public Defender) about his desire to appeal the sentencing. The Federal Defender advised defendant that since he entered into a plea bargain, the possibility of a successful appeal was limited but that he would research the matter and get back to defendant. He never did.

5. Defendant affirms that he has significant financial problems because all of his assets are either seized as a result of this matter or caught up in divorce proceedings ongoing at the same time. Defendant has been under house arrest and has not worked or earned any meaningful income to support himself since June 2014. After his Federal Defender did not respond to him, defendant had to contact several family members to raise money to pay a private attorney to pursue the appeal for him. As soon as he obtained assistance from his family, he contacted me and retained me on November 13, 2015. I have prepared the accompanying Notice of Appeal and motion for extension of time and filed it on defendant's behalf as soon as I could do so. As defendant affirms, his inability to raise money to hire a private attorney and the neglect of his Federal Defender to act promptly substantially contributed to the delay in filing the notice of appeal within time.

6. There are genuine and substantive matters of law impacting defendant's sentencing on which he is seeking review by the Court of Appeals, including but not limited to the sufficiency of the factual and evidentiary basis upon which calculation of the sentencing guidelines was based in defendant's case.

7. WHEREFORE, Defendant Bobby Boye respectfully requests that this Court grant his motion for extension of time in which to file the accompanying Notice of Appeal per the excusable neglect or good cause extension permitted under Fed. R. App. Pr. 4(b)(4). See Ramseur v. Beyer, 921 F.2d 504, 506 (3d Cir. 1990) ("the rules governing timeliness of appeals exist to promote fairness, and to promote prompt notice of appeal thereby avoiding the prejudicial effect of reopening litigation which the opposing party had assumed was closed. The length of the delay and the basis of the delay affect the overall fairness concern. Where ... the delay was minimal, and where the court has determined that the delay was not the result of any bad faith but rather occurred despite counsel's substantially diligent efforts at compliance, the judicial interest in deciding cases on the merits outweighs the interest in finality") citing Consolidated Freightways Corp. of Del. v. Larson, 827 F.2d 916 (3d Cir.1987), cert. denied, 484 U.S. 1032, 108 S.Ct. 762, 98 L.Ed.2d 775 (1988) (stressing that analogous Rule 4(a)(5) should be interpreted to warrant "a finding of excusable neglect in those instances where the court, after weighing the relevant considerations is satisfied that counsel has exhibited

substantial diligence, professional competence and has acted in good faith to conform his or her conduct in accordance with the rule”); Stutson v. United States, 516 U.S. 193, 196 (1996)(“it is not insignificant that this is a criminal case. When a litigant is subject to the continuing coercive power of the Government in the form of imprisonment, our legal traditions reflect a certain solicitude for his rights, to which the important public interests in judicial efficiency and finality must occasionally be accommodated”); Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship, 507 U.S. 380, 398-99 (1993).

Respectfully submitted,

Michael Confusione

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Counsel for Defendant/Appellant,
Bobby Boye

Dated: November 16, 2015

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Defendant.

**CERTIFICATION OF DEFENDANT BOBBY BOYE IN SUPPORT OF
MOTION TO EXTEND TIME FOR FILING NOTICE OF APPEAL**

BOBBY BOYE, of full age, hereby certifies as follows:

1) I am the defendant in this action. I make this Certification in support of my motion for extension of time to file my accompanying Notice of Appeal.

2) Immediately after the sentencing was imposed, I instructed the Public Defender representing me (K. Anthony Thomas, Esquire of the Office of the Federal Public Defender) about my desire to appeal the sentencing. He advised me that since I entered into a plea bargain, the possibility of a successful appeal was limited but that he would research the matter and get back to me. He never did.

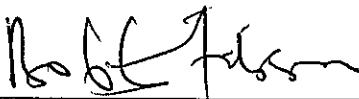
3) I have significant financial problems because all my assets are either seized as a result of this matter or caught up in my divorce proceedings that have been ongoing at the same time; I am under house arrest and have not worked or

earned any meaningful income to support myself since June 2014. As a result, I had to contact several family members to raise money to pay a private attorney to pursue the appeal for me. As soon as I got assistance from my family, I promptly contacted a private attorney to represent me (Michael Confusione of Hegge & Confusione, LLC); he has agreed and I retained him to do so on November 13, 2015. He has promptly prepared the accompanying Notice of Appeal and motion for extension of time and filed it on my behalf. My inability to raise money to hire a private attorney and the neglect of my Federal Defender to act promptly substantially contributed to the delay in filing the notice of appeal within time.

4) There are genuine and substantive matters of law impacting my sentencing on which I am seeking review by the Court of Appeals, including but not limited to the sufficiency of the factual and evidentiary basis upon which calculation of the sentencing guidelines was based in my case.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: November 16, 2015



BOBBY BOYE

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Defendant.

ORDER

The motion of defendant Bobby Boye for an order extending the time to file his notice of appeal under Fed. R. App. P. 4(b)(4) be and hereby is **GRANTED**.

, U.S.D.J.

Dated: