

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	No. 10-0162-12-CR-W-FJG
ANTAR H. ROBERTS,	)	
	)	
Defendant.	)	

**ORDER**

Pending before the Court is Defendant Antar H. Roberts' Motion for Extension of Time to File Notice of Appeal for Excusable Neglect (Doc. No. 597).

Defendant appeared before the Court for sentencing on November 21, 2011, and judgment was entered that date. The deadline for filing a notice of appeal was December 5, 2011; however, defendant did not file anything by that date. Instead, defendant sent a pro se letter to the Court, which was filed on ECF on December 29, 2011, in which defendant requested "information on the process of appealing my sentence." Doc. No. 575. The Court treated this as a notice of appeal, even though it was not timely-filed.

On January 11, 2012, the Eighth Circuit issued a letter to appointed appellate counsel that the "notice of appeal which has been submitted does not appear to have been timely filed," but that a motion may be filed with the district court requesting the district court grant an extension of time to file the notice of appeal. See Eighth Circuit Case No. 12-1057, Letter dated January 11, 2012. Thereafter, on January 23, 2012, defense counsel filed the pending motion for extension of time to file notice of appeal, requesting the Court grant an extension of 30 days after the expiration of the period for filing a timely notice of

appeal because of excusable neglect. Counsel further requests the Court treat Doc. No. 575 as a timely-filed notice of appeal.

The Court notes that neither defendant nor his counsel have given any reasons why their conduct should be considered “excusable neglect.”

With regard to determining whether a party's neglect of a deadline is excusable, the Supreme Court has held that “the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission.” Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993); see also Fink v. Union Central Life Ins. Co., 65 F.3d 722, 724 (8th Cir.1995) (applying Pioneer analysis to FRAP 4(a)(5) context). “These include ... the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” Pioneer, 507 U.S. at 395, 113 S.Ct. 1489. “The four Pioneer factors do not carry equal weight; the excuse given for the late filing must have the greatest import.” Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 463 (8th Cir.2000). “While prejudice, length of delay, and good faith might have more relevance in a closer case, the reason-for-delay factor will always be critical to the inquiry.” Id.

Gibbons v. United States, 317 F.3d 852, 854 (8th Cir. 2003). As defendant has not given an excuse for the late filing, defendant's motion for extension of time to file notice of appeal for excusable neglect (Doc. No. 597) must be **DENIED**.

**IT IS SO ORDERED.**

Date: 5/18/12  
Kansas City, Missouri

**S/ FERNANDO J. GAITAN, JR.**  
Fernando J. Gaitan, Jr.  
Chief United States District Judge