

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

SARAH L. POLACEK,

Defendant.

ORDER

03-C-0508-C

01-CR-0104-C-01

On October 3, 2003, defendant filed a motion for correction of her sentence “pursuant to the 2002 amendment to the United States Sentencing Guidelines § 3B1.2,” which I construed as a post-conviction motion brought pursuant to 18 U.S.C. § 3582(c)(2). In the motion, defendant argued that the amendment of a sentencing guideline entitled her to re-sentencing and a two-level downward adjustment for her minor role in the offense. I denied that motion in an order dated October 27, 2003. Also in the October 27 order, I denied as unnecessary defendant’s request for a certificate of appealability to appeal the denial of a motion she had filed earlier on September 16, 2003, seeking a reduction of her sentence. Now defendant has moved for an extension of time in which to file a notice of

appeal and request for leave to proceed on appeal in forma pauperis from the denial of her October 3 motion.

The deadline for filing a notice of appeal from the October 27, 2003 order was November 11, 2003. Fed. R. App. P. 4(b)(1) and 26. Pursuant to Fed. R. App. P. 4(a)(5), a district court may extend the time to file a notice of appeal upon a showing of excusable neglect or good cause. Defendant has not shown excusable neglect or good cause for her failure to file a timely appeal. She remarks that she is incarcerated and lacks legal training. She believes that the restrictions of her physical confinement and the time she needs in the prison library is hampering her ability to file a timely notice of appeal.

A finding of excusable neglect is proper in situations in which delays were caused by “intervening circumstances beyond the party’s control” as well as in situations involving “late filings caused by inadvertence, mistake, or carelessness.” Pioneer Investment Services Co. v. Brunswick Associates L.P., 507 U.S. 380, 388 (1993). “Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable’ neglect, it is a somewhat ‘elastic concept’ and is not limited strictly to omissions caused by circumstances beyond the control of the movant.” Id. at 392. The determination whether neglect is excusable “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” Id. at 395.

Defendant is arguing that her lack of legal education and her confinement in a prison

constitutes excusable neglect and good cause for her failure to meet the appeal deadline prescribed by the Federal Rules of Appellate Procedure. However, if prison confinement were to qualify as excusable neglect or good cause, then to be sure the rules would have been rewritten years ago to provide a longer filing deadline for incarcerated persons. I am not convinced that defendant's confinement, by itself, constitutes excusable neglect or good cause for her failure to timely appeal the October 27 order.

ORDER

IT IS ORDERED that defendant's motion for an enlargement of time in which to file a notice of appeal from the October 27, 2003 order is DENIED.

Entered this 10th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge