

2.1.03 | CRIMINAL APPEALS

Because the criminal appeal period is set only by rule, and not by statute, a timely criminal appeal is a “claims processing” rather than a jurisdictional requirement and can be waived. See United States v. Urutyan, 564 F.3d 679 (4th Cir. 2009).

- **Appeal Period**

The defendant's notice of appeal must be filed within 14 days after entry on the docket of the judgment or order appealed from. Fed. R. App. P. 4(b). When an appeal by the Government is authorized by statute, the Government must file its notice of appeal within 30 days after entry of judgment. A defendant may file a cross appeal within 14 days after the filing of a notice of appeal by the Government. Fed. R. App. P. 4(b). The Government may file a cross appeal within 30 days of filing of a notice of appeal by the defendant.

- **Filing Before Entry of Judgment**

A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry. Fed. R. App. P. 4(b)(2).

- **Post-Trial Motions**

If the defendant makes a timely post-trial motion, an appeal from a judgment of conviction must be taken within 14 days after entry of the order disposing of the last such motion outstanding, or within 14 days after entry of the judgment of conviction, whichever is later. Fed. R. App. P. 4(b). A notice of appeal filed after the court announces a sentence but before it disposes of one of these motions is ineffective until the date of entry of the order disposing of the last such motion outstanding, or until the date of entry of the judgment of conviction, whichever is later. A valid notice of appeal is effective without amendment to appeal from an order disposing of any of the motions.

- Motion for judgment of acquittal filed under Fed. R. Crim. P. 29 within 14 days after guilty verdict;



- Motion for arrest of judgment filed under Fed. R. Crim. P. 34 within 14 days after verdict or plea of guilty;
- Motion for a new trial on any ground other than newly discovered evidence filed under Fed. R. Crim. P. 33 within 14 days after guilty verdict;
- Motion for a new trial based on the ground of newly discovered evidence if the motion is made before or within 14 days after entry of judgment.

- **Motion to Correct Sentence**

The filing of a motion to correct a sentence under Fed. R. Crim P. 35 does not toll the time to appeal the judgment of conviction. Fed. R. App. P. 4(b)(5).

- **Extension of Appeal Period**

Upon a finding of excusable neglect, the district court may - before or after the time has expired, with or without motion and notice - extend the time for filing a notice of appeal for a period not to exceed 30 days from expiration of the prescribed time. Fed. R. App. P. 4(b)(4).

(4th Circuit Court of Appeals // December 2023)

