

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

File Name: 17a0693n.06

Case No. 17-3245

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**FILED**  
Dec 18, 2017  
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA, )  
)  
Plaintiff-Appellee, )  
)  
v. )  
)  
DAMONE TYSON, )  
)  
Defendant-Appellant. )

ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF  
OHIO

BEFORE: NORRIS, ROGERS, and THAPAR, Circuit Judges.

PER CURIAM. Damone Tyson filed his notice of appeal one day late. Because the government has raised this issue, we must dismiss.

On February 8, 2017, the district court entered a criminal judgment against Damone Tyson. Since Tyson was incarcerated, he had until February 22 to mail his notice of appeal to the court. *See* Fed. R. App. P. 4(b)(1) (criminal defendant must file notice of appeal within fourteen days of the entry of the judgment being appealed), 4(c)(1)–(2) (providing that, where certain requirements are met, inmate’s notice of appeal is deemed filed on date of mailing), 26 (setting out deadline-calculation rules). He did so on February 23. One day late.

Although Rule 4(b) is not jurisdictional, “[w]e are required to dismiss late-filed criminal appeals when the government has raised the issue.” *United States v. Dominguez*, 513 F. App’x 458, 463 (6th Cir. 2013) (citing *United States v. Gaytan-Garza*, 652 F.3d 680, 681 (6th Cir.

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2011) (per curiam)). Here, the government raised the untimeliness issue, Tyson's notice of appeal was indeed one day late, and Tyson has offered no response.

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This appeal is therefore **DISMISSED**.