

**NONPRECEDENTIAL DISPOSITION**  
To be cited only in accordance with Fed. R. App. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit  
Chicago, Illinois 60604**

Submitted April 3, 2019\*  
Decided April 5, 2019

*Before*

JOEL M. FLAUM, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-2965

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

DAVID E. MALONE,  
*Defendant-Appellant.*

Appeal from the United States District  
Court for the Northern District of Illinois,  
Eastern Division.

No. 05-CR-107-1

Elaine E. Bucklo,  
*Judge.*

**ORDER**

David Malone is in prison for distributing cocaine.<sup>1</sup> He moved the district court to reduce his sentence under 18 U.S.C. § 3582(c)(2) in light of Sentencing Guidelines Amendment 782, U.S.S.G. Supp. to App. C, Amend. 782 (2014), which reduced the base offense levels for drug offenses. The district court denied the motion on July 12, 2018. To appeal, Malone had until July 26, 14 days from the court's judgment. *See* FED. R. APP.

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\* We have agreed to decide this case without oral argument because the appeal is frivolous. FED. R. APP. P. 34(a)(2)(A).

<sup>1</sup> This appeal is Malone's third related to this offense. *See United States v. Malone*, 484 F.3d 916 (7th Cir. 2007); *United States v. Malone*, 305 Fed. App'x 299 (7th Cir. 2009).

P. 4(b)(1). The record shows, however, that he did not file the notice of appeal until September.

On appeal, Malone asserts that he never received a copy of the judgment. But the Federal Rules of Appellate Procedure preclude us from equitably tolling the time for filing a notice of appeal. *See* FED. R. APP. P. 26(b)(1); *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714–15 (2019). The district court also did not extend the deadline for doing so. And even if it had, it could have extended it only 30 days, until August 27. *See* FED. R. APP. P. 4(b)(4), 26(a)(1)(C). In that case, Malone’s appeal still would have been late.

DISMISSED