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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

MUKI JOSEPH REDHART CALLAHAN,
Defendant-Appellant.

OPINION

Cite as: 2015 Guam 24

Supreme Court Case No.: CRA14-014
Superior Court Case No.: CF0132-12

Appeal from the Superior Court of Guam
Argued and submitted on February 25, 2015
Hagåtña, Guam

Appearing for Defendant-Appellant:

Joaquin C. Arriola, Jr., *Esq.*
Arriola, Cowan & Arriola
259 Martyr St., Ste. 201
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:

James C. Collins, *Esq.*
Assistant Attorney General
Office of the Attorney General
Prosecution Division
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] Defendant-Appellant Muki Joseph Redhart Callahan appeals from the trial court's denial of his motion for extension of time to file a notice of appeal. He argues that the trial court abused its discretion in finding that the reasons set forth in his motion did not constitute good cause or excusable neglect to warrant a one-day extension.

[2] For the reasons set forth below, we reverse and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] In October 2013, a jury convicted and acquitted Callahan of several criminal sexual conduct charges. A sentencing hearing was held on January 31, 2014. The trial court filed and docketed its Judgment on April 24, 2014, sentencing Callahan to 30 years of imprisonment for each count of First Degree Criminal Sexual Conduct and 15 years of imprisonment for each count of Second Degree Criminal Sexual Conduct, all sentences to run concurrently.

[4] Callahan, through his trial counsel, filed a Notice of Appeal on May 9, 2014, one day past the ten-day filing deadline as provided by Guam Rules of Appellate Procedure ("GRAP") Rule 4(b). That same day, Callahan filed a Notice of Motion and Motion for Extension of Time for Filing Notice of Appeal, requesting a one-day extension in which to file his notice of appeal, pursuant to GRAP 4(b)(4). In Callahan's counsel's affidavit in support of the motion, she declared that she did not discover the filing of the Judgment until May 9, as she was preparing the appellate documents in the case for her Director's review and came across the copy received by her office on April 24, 2014. Callahan's counsel declared that prior to May 9, she had been preparing drafts of the Notice of Appeal, Motion to Proceed In Forma Pauperis, and Motion for

Appointment of Appellate Counsel, which she had planned to file under GRAP 4(b)(2), which allows filing of a Notice of Appeal before entry of judgment. She had planned to file these documents on May 12, along with the proposed judgment she had previously received from the Office of the Attorney General. She further declared, "Until I discovered the filed Judgment on May 9, 2014, I believed that in this case the Court was still using the previous court procedure of filing the parties' signed Judgment." RA, tab 186, Aff. at 2 (Notice of Mot. & Mot. Ext. Time Filing Notice of Appeal, May 9, 2014). She asked the trial court to find excusable neglect or good cause for the late filing.

[5] A hearing on Callahan's motion was scheduled for June 23, 2014. In the meantime, on May 29, 2014, this court dismissed Callahan's appeal for failure to file a statement of jurisdiction as required by GRAP 4.1. On June 20, 2014, Callahan filed an Emergency Application for Relief from Order Dismissing Case and Motion to Extend Time to File Statement of Jurisdiction, which this court denied. *People v. Callahan*, CRA14-008 (Order at 1-3 (June 26, 2014)). In the order, we noted that the Superior Court had not yet decided Callahan's Motion for Extension of Time to File Notice of Appeal and stated that "should the Superior Court decide that motion in favor of Callahan, Callahan may seek to bring an appeal at that time." *Id.* at 2-3.

[6] The trial court did not hold a hearing on Callahan's motion for extension of time. Instead, on June 27, 2014, the court issued an order denying Callahan's motion, finding that the reasons set forth in Callahan counsel's affidavit did not constitute excusable neglect or good cause under GRAP 4(b)(4).

[7] On July 7, 2014, Callahan filed a Notice of Appeal, appealing from the trial court's June 27, 2014 order denying his motion for extension of time. On July 10, 2014, the People filed a Motion to Dismiss Appeal, which this court denied on September 9, 2014. In that order, this

court reserved ruling on the jurisdictional issue raised by the People, instead asking the parties to address the issue for briefing and argument. “In particular, we ask[ed] the parties to address whether this court has jurisdiction pursuant to 7 GCA § 3107 or any subsection of 8 GCA § 130.15 to hear an appeal from a denial of a motion to extend the time to file a notice of appeal.” *People v. Callahan*, CRA14-014 (Order at 4 (Sept. 9, 2014)).

II. STANDARD OF REVIEW

[8] Review of a trial court’s interpretation of Guam Rules of Appellate Procedure Rule 4(b)(4) is *de novo*, but a denial of an extension of time in which to file a notice of appeal, if appealable, is reviewed for abuse of discretion. *See* Guam R. App. P. 4(b)(4) (leaving it to discretion of trial court to decide whether to grant or deny a motion to extend time to file a notice of appeal); *United States v. Dotz*, 455 F.3d 644, 647 (6th Cir. 2006) (“Decisions of the district court denying a [Rule 4(b)] motion to extend the time to file a notice of appeal are subject to review under the abuse-of-discretion standard.” (citation omitted)); *cf. Melwani v. Hemlani*, 2015 Guam 17 ¶ 16 (interpretation of statute reviewed *de novo*).

III. ANALYSIS

[9] The issue on appeal in this case is whether the trial court erred in denying Callahan’s motion for extension of time to file a notice of appeal. As a preliminary matter, we must determine whether a denial of a motion for extension of time to file a notice of appeal is itself an appealable order, for if it is not, we lack jurisdiction over this appeal.

A. Whether a Denial of a Motion for Extension of Time to File a Notice of Appeal is an Appealable Order

[10] Guam Rules of Appellate Procedure Rule 4(b) provides that “[i]n a criminal case, a defendant’s notice of appeal must be filed in the Superior Court within ten (10) days after the later of: (i) the entry of either the judgment or the order being appealed; or (ii) the filing of the

government's notice of appeal." Guam R. App. P. 4(b)(1)(A)(i)-(ii). Extensions of time to file a notice of appeal are governed by GRAP 4(b)(4), which provides:

Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the Superior Court may -- before or after the time has expired, with or without motion and notice -- extend the time to file a notice of appeal for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this Rule 4(b).

Guam R. App. P. 4(b)(4). Callahan filed a Notice of Appeal along with a Notice of Motion and Motion for Extension of Time for Filing Notice of Appeal on May 9, 2014, one day past the ten-day filing deadline for filing an appeal in a criminal case set forth under GRAP 4(b)(1)(A)(i). RA, tab 185 (Notice of Appeal, May 9, 2014); RA, tab 186 (Notice of Mot. & Mot. Ext. Time Filing Notice of Appeal). Callahan now appeals the trial court's denial of his motion for extension.

[11] Callahan argues that we have jurisdiction over an appeal from a denial of a motion for extension of time pursuant to 7 GCA § 3107 and 8 GCA § 130.15(c). Appellant's Br. at 1, 6, 9-12 (Oct. 10, 2014). Title 7 GCA § 3107 provides, in pertinent part:

§ 3107. Jurisdiction of the Supreme Court.

(a) Jurisdiction. The Supreme Court shall have authority to review all justiciable controversies and proceedings, regardless of subject matter or amount involved.

(b) Additional Authority. . . . *The Supreme Court shall have jurisdiction of all appeals arising from judgments, final decrees, or final orders of the Superior Court in criminal cases and in civil cases and proceedings. . . .*

7 GCA § 3107 (2005) (emphasis added). Title 8 GCA § 130.15 provides:

§ 130.15. Appeals Allowed by Defendant.

An appeal may be taken by the defendant:

(a) From a final judgment of conviction. The commitment of a defendant by reason of mental illness, disease or defect shall be deemed to be a final judgment of conviction within the meaning of this Section.

(b) From an order denying a motion for a new trial.

(c) *From any order made after judgment, affecting the substantial rights of the defendant.*

(d) Pursuant to § 40.80.

(e) From a judgment of conviction upon a plea of guilty or nolo contendere

8 GCA § 130.15 (2005) (emphasis added).

[12] Callahan argues that the trial court’s denial of his motion for extension of time “operates as a final order” and is therefore subject to this court’s jurisdiction under 7 GCA § 3107. Appellant’s Br. at 11. He contends that “[o]ther than the Judgment, there is nothing more ‘final’ in the case than an order denying the Defendant’s right to appeal.” *Id.* Additionally, he argues that the denial of an extension of time to file a notice of appeal affects his “substantial rights” and is thus appealable under 8 GCA § 130.15(c), because “certainly, the right to appeal a conviction is among those rights.” *Id.* at 11-12.

[13] By contrast, the People argue that neither 7 GCA § 3107 nor 8 GCA § 130.15 provides this court jurisdiction over this appeal. The People contend that in a criminal case, unless a defendant can show that his appeal falls under one of those allowed under 8 GCA § 130.15, the defendant cannot proceed under a separate theory that because an order is a “final order” under the language of 7 GCA § 3107(b), it is *per se* appealable as a matter of right. Appellee’s Br. at 10 (Oct. 23, 2014).

[14] The People point to this court’s holding in *People v. Angoco* for support:

We have consistently held that this court’s appellate jurisdiction is limited to those matters which the legislature permits us to review. Title 7 GCA § 3107

(2005) outlines the jurisdiction of this court, including its appellate and supervisory jurisdiction Despite statutory provisions expressing a broad grant of jurisdiction . . . where other statutory provisions contain specific limitations on the ability of a party to pursue appellate relief, we must respect those restrictions. The jurisdictional statutes outlining our appellate jurisdiction are also to be strictly interpreted.

2006 Guam 18 ¶ 8 (second omission in original) (citations and internal quotation marks omitted).

This court then went on to hold that “the authority of a defendant to appeal rulings in criminal cases as a matter of law cannot exceed the express statutory authorization of 8 GCA § 130.15.”

Id. ¶ 17 (citing *People of the Territory of Guam v. Ulloa*, 903 F.2d 1283, 1285-86 (9th Cir. 1990)).

[15] It is clear from the holding in *Angoco* that notwithstanding the seemingly broad language in 7 GCA § 3107, a defendant may appeal only from one of the rulings listed in 8 GCA § 130.15. The People argue that a denial of an extension of time to file a notice of appeal is not a ruling made appealable by 8 GCA § 130.15. The People cite U.S. Supreme Court precedent holding that there is no constitutional right to an appeal, but recognizing that where a statute creates a right to appeal, certain constitutional rights may attach to ensure fair treatment of all defendants. Appellee’s Br. at 13 (quoting *Jones v. Barnes*, 463 U.S. 745, 751 (1983)). Therefore, the People argue, “in Guam, the only right which Callahan enjoys to appeal is that provided by 8 G.C.A. § 1.11(h) and the statutes which enable it, found in Title 8 G.C.A. Chapter 130.”¹ *Id.* Contrary to Callahan’s assertion that a denial of an extension of time to file a notice of appeal affects his “substantial rights”—namely, his right to appeal his conviction—and thus is appealable under 8 GCA § 130.15(c), Appellant’s Br. at 12, the People assert that the order denying an extension

¹ Title 8 GCA § 1.11(h) provides: “In any criminal action, the defendant is entitled: . . . [t]o appeal.” 8 GCA § 1.11(h) (2005).

“*did not* ‘affect’ the right to appeal itself, but rather it affected Callahan’s motion to extend time to file his notice of appeal,” Appellee’s Br. at 14.

[16] Moreover, the People argue that GRAP 4(b)(4), the rule authorizing extensions of time to file a notice of appeal, does not contain any language which might be construed as giving any party a “right” to an extension, “but rather dictates the limits of the court’s *discretion* to grant relief.” *Id.* at 15; *see also id.* at 16 (“To say the [sic] any matter of discretion which may touch upon a legal right ‘affects’ that right (and therefore becomes the valid basis for an appeal) is to allow the meaning of the term to be contorted beyond recognition.” (footnote omitted)). The People claim that were this court to determine that the denial of an extension of time to file a notice of appeal affects the substantial rights of a defendant, it would “throw[] open the door for any number of future appeals based on similarly tenuous connections between (1) legal rights and (2) matters which are within the discretion of the trial court.” *Id.* at 15.

[17] Other than pointing to the language of 8 GCA § 130.15 and GRAP 4(b)(4), the People do not cite to any authority directly supporting its argument that an order denying a motion for extension of time to file a notice of appeal is not appealable. This is perhaps because it is difficult to find case law exactly on point. Very few reported cases discuss the appealability of an order denying a Rule 4(b) motion for extension of time to file a notice of appeal in the context of a statute similar to 8 GCA § 130.15.

[18] The federal circuit courts of appeal review orders denying motions to extend time to file a notice of appeal—made pursuant to Federal Rules of Appellate Procedure (“FRAP”) Rule 4(b)(4), the federal counterpart to GRAP 4(b)(4)—without discussing whether the denials themselves are appealable. *See, e.g., Dotz*, 455 F.3d at 647 (“Decisions of the district court denying a [Rule 4(b)] motion to extend the time to file a notice of appeal are subject to review

under the abuse-of-discretion standard.”); *United States v. Vogl*, 374 F.3d 976, 981 (10th Cir. 2004) (“We will not overturn a district court’s determination that there has been ‘excusable neglect’ under Rule 4(b) unless there has been a ‘clear abuse of discretion.’” (quoting *Gooch v. Skelly Oil Co.*, 483 F.2d 366, 368 (10th Cir. 1974))); *United States v. Clark*, 193 F.3d 845, 846 (5th Cir. 1999) (“The district court dismissed Clark’s case because he had filed his notice of appeal one day late and had failed to demonstrate ‘excusable neglect’ for so doing. We review this decision for abuse of discretion.” (footnote and citations omitted)); *United States v. Breit*, 754 F.2d 526, 528-29 (4th Cir. 1985) (reviewing district court’s denial of defendant’s FRAP 4(b) motion to extend time for abuse of discretion). However, it does not appear that criminal defendants in federal cases are limited in taking appeals the same way criminal defendants in Guam are limited to the appeals enumerated in 8 GCA § 130.15.²

[19] Like the federal circuit courts, several state appellate courts review decisions on motions for extension of time to file an appeal without discussing the appealability of such decisions. *See, e.g., State v. Fischer*, 2007 ND 22, ¶ 6, 727 N.W.2d 750, 752 (“We review a district court’s decision on a motion to extend the time to file an appeal for an abuse of discretion.” (citation omitted)); *Commonwealth v. Trussell*, 862 N.E.2d 444, 445 (Mass. App. Ct. 2007) (reviewing trial court’s grant of extension to file notice of direct appeal for abuse of discretion); *In re Lund*,

² At least one circuit has addressed the issue of the appealability of an order denying a FRAP 4(b) motion to extend time to file a notice of appeal. In *Diamond v. United States District Court for the Central District of California*, the Ninth Circuit Court of Appeals stated, “This Court has not previously addressed the issue whether an order denying a motion to file a late notice of appeal is itself appealable. However, we have little difficulty in concluding that such an order is appealable under 28 U.S.C. § 1291.” 661 F.2d 1198, 1198 (9th Cir. 1981). Title 28 U.S.C. § 1291 provides jurisdiction of the federal courts of appeals over final decisions of the district courts. 28 U.S.C.A. § 1291 (“The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. . .”). Thus, the basis of the Ninth Circuit’s determination that an order denying a Rule 4(b) extension is appealable is the statute conferring on the circuit courts jurisdiction over final decisions of the district courts. Again, however, there is no federal counterpart to 8 GCA § 130.15.

857 A.2d 279, 280 (Vt. 2004) (reviewing trial court's grant of State's motion to extend time to file notice of appeal for abuse of discretion).

[20] Title 8 GCA § 130.15 is derived from former Guam Penal Code section 1237, which in turn was derived from the 1872 version of California Penal Code section 1237. *See* Guam Penal Code § 1237 (1953); Cal. Penal Code § 1237 (1872). The 1872 version of California Penal Code section 1237 provided:

§ 1237. Appeal by defendant

An appeal may be taken by the defendant:

1. From a final judgment of conviction;
2. From an order denying a motion for a new trial;
3. *From any order made after judgment, affecting the substantial rights of the party.*

Cal. Penal Code § 1237 (1872) (emphasis added). The California statute has since been amended; the language in former section 1237(3) is now found in California Penal Code section 1237(b). *See* Cal. Penal Code § 1237(b) (West 2004). The language in section 1237(b) is virtually the same as that found in 8 GCA § 130.15(c). However, California does not have a rule similar to GRAP 4(b)(4); instead, extensions for the filing of a notice of appeal are not permitted except in the rare event of a natural disaster or other public emergency. *See* Cal. R. Ct. 8.104(b) (“Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.”); Cal. R. Ct. 8.66(a) (authorizing the Chair of the Judicial Council to extend the time to do any act required or permitted by the rules “[i]f made necessary by the occurrence or danger of an earthquake, fire, or other public emergency, or by the destruction of or danger to a building housing a reviewing court”). Thus, the California courts have not addressed the issue of the appealability of an order denying an extension of time to file a notice of appeal.

[21] In *People v. Gallardo*, a California Court of Appeals addressed the appealability of an order denying a motion to vacate judgment, stating:

A ruling denying a motion to vacate judgment would qualify semantically as an order after judgment affecting substantial rights, but such an order ordinarily is not appealable when the appeal would merely bypass or duplicate appeal from the judgment itself. “In such a situation appeal from the judgment is an adequate remedy; allowance of an appeal from the order denying the motion to vacate would virtually give defendant two appeals from the same ruling and, since there is no time limited [sic] within which the motion may be made, would in effect indefinitely extend the time for appeal from the judgment.”

92 Cal. Rptr. 2d 161, 167 (Ct. App. 2000) (quoting and citing *People v. Thomas*, 342 P.2d 889 (Cal. 1959)).

[22] At first glance, *Gallardo* appears to lend support to the People’s argument that an order denying a motion to extend time to file a notice of appeal is not appealable. However, unlike a situation involving a motion to vacate judgment, a motion for extension of time to file a notice of appeal does not bring about the same effect of indefinitely extending the time for appeal from the judgment. Rather, the exact opposite is true: GRAP 4(b)(4) imposes a strict time limit on any grant of extension of time to appeal. Under the rule, “the Superior Court may . . . extend the time to file a notice of appeal for a period *not to exceed thirty (30) days* from the expiration of the time otherwise prescribed by this Rule 4(b).” Guam R. App. P. 4(b)(4) (emphasis added).

[23] Despite the dearth of case law directly on point, we hold today that an order denying a motion for extension of time to file a notice of appeal is an appealable order under 8 GCA § 130.15(c) because it is an order made after judgment which affects the substantial rights of the defendant. Although there is no constitutional right to an appeal, Guam law provides criminal defendants an appeal as of right. See 8 GCA § 1.11(h) (2005) (“In any criminal action, the defendant is entitled: . . . [t]o appeal.”). In the criminal context, the interests at stake are liberty

and sometimes (though not in Guam) life. Indeed, in this case, Callahan faces a 30-year term of imprisonment; clearly, the loss of the right to appeal in this circumstance is substantial.

[24] We do not share the People's concern that a determination that the denial of a GRAP 4(b)(4) extension affects the substantial rights of a defendant would "throw[] open the door for any number of future appeals based on similarly tenuous connections between (1) legal rights and (2) matters which are within the discretion of the trial court." Appellee's Br. at 15. Indeed, we do not believe the connection between the right to appeal and a motion for extension of time to appeal to be as tenuous as the People suggest. An appeal from a denial of a GRAP 4(b)(4) does not "merely bypass or duplicate appeal from the judgment itself." *See Gallardo*, 92 Cal. Rptr. 2d at 167. Rather, GRAP 4(b)(4) provides an avenue by which an otherwise untimely defendant may perfect an appeal by moving for an extension within 30 days of the 10-day deadline set forth in GRAP 4(b)(1)(A) and securing a finding of good cause or excusable neglect for the untimely filing. The fact that a matter is subject to the trial court's discretion is not dispositive of whether an order exercising that discretion is appealable under 8 GCA § 130.15(c). Although, technically speaking, there is no "right" to a GRAP 4(b)(4) extension of time, the practical effect of denying such a motion is the loss of a defendant's substantial—and only—right to appeal his conviction.

[25] Furthermore, not allowing an appeal of an order denying a GRAP 4(b)(4) extension would have severe implications on criminal defendants who, through no fault of their own, lose their one appeal as of right by filing a late notice of appeal and losing a motion for extension of time.

[26] We find the following language from the U.S. Supreme Court's decision in *Stutson v. United States* instructive to our holding today, even if the holding in that case does not directly apply to the case at hand³:

Finally, it is not insignificant that this is a criminal case. When a litigant is subject to the continuing coercive power of the Government in the form of imprisonment, our legal traditions reflect a certain solicitude for his rights, to which the important public interests in judicial efficiency and finality must occasionally be accommodated. We have previously refused to allow technicalities that caused no prejudice to the prosecution to preclude a remand under 28 U.S.C. § 2106 (1988 ed.) "in the interests of justice." And procedural accommodations to prisoners are a familiar aspect of our jurisprudence. To the extent that the dissent suggests that it is inconsistent with our "traditional practice," to call upon a Court of Appeals to reconsider its dismissal of a prisoner's appeal because his lawyer filed it one day late, in circumstances where the Court of Appeals' decision may have been premised on the assumption, unanimously rejected by other Courts of Appeals, that more stringent rules as to filing deadlines apply to prisoners than to creditors filing claims in a bankruptcy proceeding, we must respectfully disagree.

516 U.S. 193, 196-97 (1996) (citations omitted).

[27] Of course, in order to avail themselves of the substantial right to appeal, criminal defendants and their attorneys must exercise due diligence and file their notices of appeal within the applicable ten-day limit set forth in GRAP 4(b)(1)(A). Where the defendant fails to do so, he has 30 additional days to seek to perfect an appeal, *i.e.*, by moving in the Superior Court for an extension of time to file an appeal.⁴ Guam R. App. P. 4(b)(4).

³ In *Stutson*, the defendant's attorney filed his notice of appeal one day late. 516 U.S. 193, 194 (1996). The district court held that the untimeliness was not the result of "excusable neglect" within the meaning of FRAP 4(b). *Id.* On appeal to the Eleventh Circuit, the parties disputed the applicability of the liberal understanding of "excusable neglect" in the then-recent Supreme Court case of *Pioneer Investments Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993). *Id.* The Court of Appeals affirmed the district court's ruling and "dismissed *Stutson*'s appeal without hearing oral argument or writing an opinion." *Id.* at 194-95. In response to *Stutson*'s petition for a writ of certiorari to the Supreme Court, the Solicitor General reversed the Government's position in light of the unanimous view of those Courts of Appeals that had addressed the issue and held that the *Pioneer* standard applies in FRAP 4 cases. *Id.* at 195. The Supreme Court granted *Stutson*'s petition and remanded the case to the Eleventh Circuit for further consideration in light of *Pioneer*. *Id.* at 197-98. We address the *Pioneer* standard in part III.B. below.

⁴ Future defendants who move for a GRAP 4(b)(4) extension may want to consider filing not only the motion, but also the actual notice of appeal, within the 30-day period set forth under the rule. Our cursory review of

[28] Because Callahan filed his motion for extension of time within the 30-day period set forth in GRAP 4(b)(4), we have jurisdiction over this appeal from the order denying that motion.

B. Whether the Trial Court Abused its Discretion in Denying Callahan's Motion for Extension of Time to File a Notice of Appeal

[29] We next turn to the issue of whether the trial court's denial of Callahan's GRAP 4(b)(4) motion was an abuse of discretion.

[30] In his motion for extension of time to file a notice of appeal, Callahan sought a finding of excusable neglect or good cause for his having filed his notice of appeal a day past the 10-day limit. In support of the motion, Callahan's counsel submitted an affidavit wherein she declared that prior to May 9, 2014, she had been preparing drafts of documents to be filed pursuant to GRAP 4(b)(2), "which allows filing of the Notice of Appeal *before* entry of judgment." RA, tab 186, Aff. at 1 (Notice of Mot. & Mot. Ext. Time Filing Notice of Appeal); *see also* Guam R. App. P. 4(b)(2) ("Filing before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order -- but before the entry of the judgment or order -- is treated as filed on the date of and after the entry."). Counsel declared that she had the proposed judgment prepared by the Attorney General's Office, which she "planned to file Monday, May 12, along with a Notice of Appeal, Motion to Proceed In Forma Pauperis, and Motion for Appointment of Appellate Counsel." RA, tab 186, Aff. at 1 (Notice of Mot. & Mot. Ext. Time Filing Notice of Appeal). She further declared that she "specifically intended to file the judgment and appellate documents together to *ensure* that [she] would not miss the ten-day limit for filing the Notice of Appeal and would not need to agonize over when the Notice of Entry was

case law on the issue suggests a split of authority concerning whether a bare motion is enough to establish appellate jurisdiction where the notice of appeal itself is not filed within the 30-day period. Because this is a non-issue in this case, as Callahan filed both a notice of appeal and a motion for extension within the 30-day period, we decline to make any holding as to the issue at this time.

filed and the time began.” *Id.* at 2. According to counsel, it was only as she was gathering the case files on May 9 for her director’s review that she discovered a copy of the court’s judgment and notice of entry on docket received by her office on April 24, 2014. *Id.* Until such discovery, counsel “believed that in this case the Court was still using the previous court procedure of filing the parties’ signed Judgment.” *Id.*

[31] The trial court set forth the following reasons for denying Callahan’s motion for extension of time to file a notice of appeal:

Defendant claims there is good cause or excusable neglect Inexplicably though, Defendant does not put forth any substantive reason why his admitted neglect is somehow excusable or why there is otherwise good cause, which is required to be shown for this Court to so find. Defendant does submit that he relied upon this Court accepting a proposed judgment prepared by the parties, yet Defendant admits that the parties never filed any such proposed judgment with the Court. Thus it is unclear how the parties could rely upon the Court’s acceptance of a proposed judgment if this Court has never seen it or would even know that it exists. In fact, this document was not offered in support of Defendant’s motion and has still never been presented to the Court to this date. For all this Court knows, the Government may have taken months after sentencing to prepare such a document, or the Defendant held onto it for months until he was ready to file a notice of appeal at his convenience, or the purported document does not exist at all. Regardless, this Court has for several months now prepared its own judgment forms, and there is no valid reason to expect the Court to have waited for months or years after Defendant’s sentencing to see if the parties ever produce a proposed judgment form, if at all. Again, Defendant fails to argue how his neglect was excusable, and Defendant fails to argue what constitutes good cause for his failure to timely file a notice of appeal. Nevertheless, this Court finds from the motion and the underlying record that no such good cause exists, nor is the neglect by Defendant excusable.

RA, tab 191 at 1-2 (Order Denying Mot. Ext. Time Filing Notice of Appeal, July 7, 2014).

[32] In *Pioneer Investments Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), the Court considered the meaning of “excusable neglect” under Rule 9006(b)(1) of the *Federal Rules of Bankruptcy Procedure*. The rule “empowers a bankruptcy court to permit a late filing if the movant’s failure to comply with an earlier deadline ‘was the result of excusable

neglect.” *Pioneer Invs. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 382 (1993).

The Court concluded that the determination of what constitutes “excusable neglect”:

is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include . . . the danger of prejudice to the debtor, 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.

Id. at 395 (footnote omitted).

[33] The Supreme Court’s construction of “excusable neglect” in *Pioneer* applies to the term as it is used in FRAP 4(b)(4). *United States v. Torres*, 372 F.3d 1159, 1162 (10th Cir. 2004) (citations omitted). As mentioned above, FRAP 4(b)(4) is the federal counterpart to GRAP 4(b)(4). Thus, cases that interpret FRAP 4(b)(4) are instructive. See *People v. Perez*, 2015 Guam 10 ¶ 19 n.4 (citation omitted); *Pelowski v. Taitano*, 2000 Guam 34 ¶ 12.

[34] We are persuaded by *Pioneer* and adopt its four-factor test for determinations of “excusable neglect” under GRAP 4(b)(4). Thus, the factors to consider are (1) the danger of prejudice to the non-moving party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith.

[35] Because the *Pioneer* standard is a balancing test, *United States v. Brown*, 133 F.3d 993, 997 (7th Cir. 1998), a trial court considering a GRAP 4(b)(4) motion must consider each of the factors. Here, the trial court’s order denying Callahan’s motion made no mention of the *Pioneer* test or any of the relevant factors considered in motions alleging “excusable neglect.” At most, the trial court’s order speaks to the third *Pioneer* factor, “the reason for the delay.” The other three factors do not appear to have played a part in the trial court’s decision that Callahan’s one-day delay was not a result of excusable neglect.

[36] In light of the fact that the trial court did not have the benefit of today’s opinion adopting the *Pioneer* standard for GRAP 4(b)(4) motions, we believe remand is necessary to afford the trial court the opportunity to apply all four factors and balance them according to the particular circumstances of this case.

IV. CONCLUSION

[37] For the foregoing reasons, we hold that an order denying a GRAP 4(b)(4) motion for an extension of time to file a notice of appeal is an appealable order under 8 GCA § 130.15(c) because it affects a criminal defendant’s substantial right to appeal.

[39] We adopt the four-factor balancing test established in *Pioneer Investments Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), and hold that the trial court must apply each factor in considering whether there is “excusable neglect” for an untimely appeal under GRAP 4(b)(4). Because the trial court’s order denying Callahan’s motion arguably considered just one of the *Pioneer* factors but not the rest, we **REVERSE** and **REMAND** for application of the four-factor test in the first instance.

Original Signed: **F. Philip Carbullido**
By

Original Signed: **Katherine A. Maraman**
By

F. PHILIP CARBULLIDO
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

AUG 13 2015

By: **Charlene I. Santos**

Clerk
Supreme Court of Guam