

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 98-8429

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VIRGINIA HIGH,

Defendant-Appellant.

On Appeal From The United States District Court
For The Northern District of Georgia

APPELLANT'S RESPONSE TO JURISDICTIONAL QUESTION

VIRGINIA HIGH
Appellant

FPC Marianna
3625 FCI Road
P.O. Box 7006
Marianna, Fl. 32447-7006

Pro Se Litigant

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VIRGINIA HIGH,

Defendant, Appellant.

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APPEAL NO. 98-8429

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

- (1) The Honorable Robert L. Vining, Jr., United States District Judge
- (2) Michael Abbott, Trial and Appellate Counsel
- (3) Richard H. Deane, Jr., United States Attorney, Northern District of Georgia
- (4) H. Allen Moye, Assistant United States Attorney, Northern District of Georgia
- (5) The United States of America.

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APPEAL NO. 98-8429

APPELLANT'S RESPONSE TO COURT'S JURISDICTIONAL QUESTION

Comes now Virginia High, a pro se litigant and federal inmate at the Federal Prison Camp, Marianna, Florida, and responds as to the jurisdictional questions posed by the Court in the above-styled case.

I.

The United States District Court entered an order denying Appellant's motion for relief and vacature of sentence pursuant to Title 28 U.S.C. §2255, on February 27,1998. The motion was for new trial, appointment of counsel and credit for time served. The motion included other constitutional issues and matters; ineffective assistance of counsel, through failure to investigate charges and bring forth a defense and witnesses on behalf of the defendant-appellant, illegal seizure of bank accounts and insurance proceeds in the amount of \$15,000, and failure to file appeal from district courts order of denial on motion for release pending appeal, insufficient evidence to convict, selective prosecution raising a colorable issue, and illegal search and seizure conducted without a search warrant.

On March 12,1998 a Notice of Appeal was filed, dated March 7,1998 and submitted with it was the filing fee of \$5.00 and \$100 for the docketing fee. This was not docketed by the Clerk until March 16,1998.

The Court has inquired as to it's jurisdiction over this matter and whether the Notice of Appeal was timely filed from the "denial of the motion for new trial,

etal. of February 24,1998 and docketed as a final order on February 28,1998, pursuant to Federal Rules of Appellate Procedure 4(b).

II.

The appellant, Virginia High was indicted by a grand jury, tried by a jury, and convicted of various violations of the laws of the United States of America. The facts are set forth in the opinion of this Court; United States v. High, et al., 117 F.3d 464 (11th Cir. 1997). This Court affirmed in part and reversed in part, on July 21, 1997, Appellant filed a motion for new trial (Docket No. 509), and a motion to vacate her sentence. (Docket No. 510). The district court entered an order denying each of these motions. (Docket No. 547), and judgment was entered on the court's order (Docket No. 548)

A Notice of Appeal which indicates that the appeal is taken from the denial of the \$2255 motion and civil action, was filed on March 16, 1998, per the entry of the Clerk of this Court. The Notice of Appeal bears the date of March 7,1998. This date could be construed to be the mailing date but it is noted that the filing fee bears the date of March 12,1998. (See; Letter, Docket Entry of March 23,1998). Therefore, it is plausible and reasonable to believe that the more likely mailing date is March 12,1998.

A pro se prisoner's Notice of Appeal is filed at the time of delivery to prison authorities for forwarding to district court. Houston v. Lack, 487 U.S. 266, 276 (1988); United States v. Okaine, 971 F. Supp 1479 (S.D. Ga. 1997)

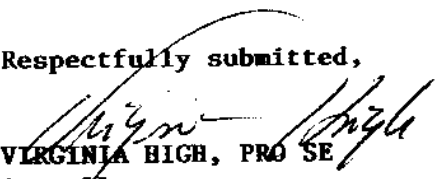
The Court here makes reference and inquiry into Rule 4 (b), Fed. R.App.P., the rule applicable to criminal appeals. Under this Rule, appellant has only 10 days from the February 27 date in which to deposit the Notice of Appeal in the mails. A calculation of 10 working days [Fed.R.Crim.P. 45(a)] from February 27, 1998 would make the appellant's Notice of Appeal timely had it been deposited in the mail on March 13,1998. The clerk of the district court failed to keep the mailing envelope it received the notice in, and the best estimated date of mailing is the date on which the money order was issued and withdrawn from the appellant's

inmate fund account. This date is even more credible because the notice was received and filed three (3) working days from March 12, 1998, that is, Monday, March 16, 1998.

CONCLUSION

For all the foregoing reasons and assertions, based upon the facts and credible evidence related to this issue, the Appellant respectfully submits that this Court has jurisdiction and that the Notice of Appeal was timely filed.

Respectfully submitted,


VIRGINIA HIGH, PRO SE
Appellant

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing motion to be delivered in a postage pre-paid envelop by the United States mail to the Assistant United States Attorney , 400 United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30335, this 23rd day of December, 1998.


VIRGINIA HIGH, PRO SE