

At a hearing today, Bravo testified that he placed his notice of appeal in the mailbox at the Federal Correctional Institution at Fairton, where he was incarcerated, on January 29, 1999, eight days after his sentencing and thus within Rule 4(b)'s ten-day period for filing a notice of appeal. Bravo testified that he sent copies of the notice to the Court of Appeals via registered mail with a first-class postage stamp on the envelope and to the United States Attorney's Office via regular first-class mail only. However, his mailing was returned to him on February 2, 1999 because it was short nineteen cents of postage. Bravo testified that he immediately placed a thirty-two cent stamp on the mailing and dropped it in the mailbox; Fairton's internal mailing records show that it did not leave the institution until February 5, 1999.

The Federal Rules of Appellate Procedure give inmates the benefit of the "mailbox rule" for their court filings. Fed. R. App. P. 4(c)(1) provides that:

If an inmate confined in an institution files a notice of appeal . . . , the notice is timely if it is deposited in the institution's internal mail system on or before the last date for filing. If an

²(...continued)
not cover any post-sentencing matters. Also, Bravo stated that after his sentencing, Nastasi told him that he didn't feel that Bravo had much to appeal. Bravo, therefore, was acting pro se when he mailed his notice of appeal. We granted Nastasi's motion to formally withdraw as counsel on July 14, 1999 and appointed Hope Lefeber, Esq. as Bravo's new counsel. We are grateful to Ms. Lefeber for her prompt and effective preparation so that we could resolve the Court of Appeals's question at an early date.

institution has a system designed for legal mail, the inmate must use that system of receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

This rule was enacted in response to Houston v. Lack, 487 U.S. 266, 275-77 (1988), in which the Supreme Court held that a prisoner's notice of appeal is "filed" when the prisoner delivers it to prison authorities. See also Jackson v. Nicoletti, 875 F. Supp. 1107, 1110 (E.D. Pa. 1994) ("[N]otices of appeals by pro se prisoners are effective when the notices leave the prisoners' hands.").

We find that Bravo is entitled to relief under the "mailbox rule" because he deposited his notice of appeal in Fairton's mail system before his time to appeal expired. While it is true that Rule 4(c)(1) mentions that "first-class postage" should be "prepaid," we note that Bravo, because he wisely elected to send his notice of appeal via registered mail, actually paid more than the first-class postal rate. We therefore find that the requirement of prepayment of postage is satisfied in this case.

We also note that the postal rates were increased on January 10, 1999. The first-class letter rate went up one penny for the first ounce, to thirty-three cents, and the certified rate went up five cents, to \$1.40. See Postal Rates Change on Sunday (Jan. 7, 1999) <<http://www.usps.gov/news/press/99/>

9903new.htm>. With the limited resources available to him as a prisoner, it seems that Bravo was unaware of the rate increase.³ For this reason, we find that Bravo's failure to include the correct postage on his original mailing constitutes "excusable neglect" under Fed. R. App. P. 4(b)(4), and therefore he is entitled to an additional thirty-day period in which to file his notice.

Rule 4(c)(1) states that an inmate may demonstrate timely filing through a declaration or notarized statement setting forth the date on which the inmate deposited the notice in the institution's mailbox and stating that first-class postage has been prepaid. While Bravo conceded that he did not file such a declaration with his original notice of appeal, he thereafter sent to the Court of Appeals an "informal letter response" which included a "certificate of service" complying with the rule. We therefore find that Bravo has satisfied the certification provision in Rule 4(c)(1).

Finally, we note that the Government stated in open Court today that it was not "bent on depriving [Bravo] of his right to appeal." Although the Government's view is not dispositive on this jurisdictional issue, it gives no additional reason to deny Bravo the relief he has requested.

An Order granting Bravo's "motion" follows.

³ We infer this because Bravo did take the trouble to weigh his package and calculated that \$5.80 in postage was due, his (unnecessary) enclosing of four copies of his Presentence Investigation Report having driven up the weight.

