

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2460

United States of America,

Appellee,

v.

Alan Ray Rick, also known as David
Allen Feakes, also known as George
Braun,

Appellant.

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* Appeal from the United States
* District Court for the District
* of South Dakota.

[UNPUBLISHED]

Submitted: October 31, 2002

Filed: November 5, 2002

Before McMILLIAN, FAGG, and BOWMAN, Circuit Judges.

PER CURIAM.

After Alan Ray Rick admitted to violating his supervised release, the district court revoked supervised release, sentenced Rick to twelve months imprisonment and forty-six months supervised release, and added an additional supervised release condition. Judgment was entered on May 17, 2002, and on May 31, Rick filed a notice of appeal designating this judgment. On appeal, Rick challenges only the district court's imposition of the additional condition of supervised release.

Rick's May 31 notice of appeal was filed more than ten days, but fewer than forty days, after the May 17 entry of judgment. See Fed. R. App. P. 4(b)(1), 26(a); United States v. Austin, 217 F.3d 595, 597 (8th Cir. 2000) (timely notice of appeal is mandatory and jurisdictional, and issue is raised sua sponte even if parties concede jurisdiction). We therefore remand to the district court for a finding on whether the notice of appeal should be deemed timely based on excusable neglect or good cause. See Fed. R. App. P. 4(b)(4).

Accordingly, we remand to the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.