

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 25 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 20-50339

Plaintiff-Appellee,

D.C. No. 2:08-cr-01318-ODW-1

v.

MEMORANDUM*

JEFF MCGRUE,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Submitted January 19, 2022**

Before: SILVERMAN, CLIFTON, and HURWITZ, Circuit Judges.

Jeff McGrue appeals pro se from the district court's orders denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) and motion for reconsideration. We dismiss McGrue's appeal as untimely.

Giving McGrue the benefit of the mailbox rule, he filed his notice of appeal

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

39 days after the district court's order denying his motion for reconsideration, well outside the 14-day deadline. *See* Fed. R. App. P. 4(b)(1)(A). We decline to remand for the district court to determine whether to grant appellant an extension of time to file the notice of appeal, *see* Fed. R. App. P. 4(b)(4); *United States v. Ono*, 72 F.3d 101, 103 (9th Cir. 1995) (order), because McGrue waived any challenge to the district court's denial of compassionate release by failing to challenge that denial in his opening brief. *See United States v. Perez-Silvan*, 861 F.3d 935, 938 (9th Cir. 2017) (declining to remand for the district court to determine if there was excusable neglect for the untimely notice of appeal because appellant waived his challenge to the revocation of supervised release by failing to raise any arguments concerning the revocation in his opening brief). Because the government properly objected to McGrue's untimely notice of appeal, we must dismiss. *See United States v. Sadler*, 480 F.3d 932, 942 (9th Cir. 2007).

McGrue's motions to strike and to certify a question to the United States Supreme Court, along with any other pending motions, are denied.

DISMISSED.