

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JAMES A. WILLIAMS,
Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

2012-5070

Appeal from the United States Court of Federal
Claims in No. 10-CV-753, Judge Victor J. Wolski.

ON MOTION

Before NEWMAN, *Circuit Judge.*

ORDER

The United States moves to dismiss the appeal because the appeal was untimely filed. James A. Williams opposes. The United States replies. Mr. Williams also moves to strike the United States motion to dismiss. The United States opposes. Mr. Williams replies.

The Court of Federal Claims entered judgment in the underlying case on December 29, 2011 in the govern-

JAMES WILLIAMS v. US

2

ment's favor. The Court of Federal Claims filed Williams' appeal 61 days later, on February 28, 2012. Williams, however, offers some evidence a copy of his appeal was received before expiration of the 60 day deadline. Therefore, we deem it the better course to deny the motion without prejudice to the parties addressing the jurisdictional issue to the merits panel.

Accordingly,

IT IS ORDERED THAT:

(1) The motion to dismiss is denied. The United States should calculate its brief due date from the date of this order.

(2) The motion to strike is denied as moot.

FOR THE COURT

/s/ Jan Horbaly
Jan Horbaly
Clerk

s24