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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

DEANNE LEMAY,

Defendant - Appellee.

No. 06-30022

D.C. No. CR-02-00045-SEH

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEANNE LEMAY,

Defendant - Appellant.

No. 06-30023

D.C. No. CR-02-00045-SEH

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted November 13, 2007 **

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

In these consolidated appeals, Deanne LeMay appeals from the district court's order declining to resentence her following remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), and from the district court's order concluding that it lacked authority to grant an extension of time to file a notice of appeal from the order declining to resentence LeMay.

LeMay contends that the ten day period to file a notice of appeal pursuant to Fed. R. App. P. 4(b) did not begin to run following the entry of the order declining to resentence her, because she lacked counsel and was not notified of her right to appeal pursuant to Fed. R. Crim. P. 32(j)(1)(B). We conclude that Fed. R. Crim. P. 32(j)(1)(B) does not apply to the district court's determination as to whether resentencing is warranted following remand under *Ameline*, because that rule applies only after sentencing, and the *Ameline* determination on remand does not constitute "sentencing" for purposes of the rule. *See United States v. Silva*, 472 F.3d 683, 688-89 (9th Cir. 2007) (rejecting the contention that Rule 32 gives rise

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

to a right to allocution prior to the district court's determination as to whether resentencing is warranted following remand under *Ameline*).

Furthermore, we conclude that the district court did not abuse its discretion by denying LeMay's first motion for extension of time to file a notice of appeal on the ground that counsel had not been approved to appear pro hac vice. *See United States v. Prairie Pharmacy*, 921 F.2d 211, 212-14 (9th Cir. 1990).

The district court did not err in concluding that it lacked authority to grant LeMay's renewed motion to file a delayed notice of appeal, because that motion was filed over 40 days after entry of the order LeMay sought to appeal. *See Fed. R. App. P. 4(b)(4); United States v. Green*, 89 F.3d 657, 659-60 (9th Cir. 1996). Accordingly, in appeal number 06-30023, we affirm the district court's order concluding that it lacked jurisdiction to grant the requested extension of time to file an untimely notice of appeal.

We dismiss appeal number 06-30022 for lack of jurisdiction because the notice of appeal from the district court's order declining to resentence LeMay was untimely. *See Fed. R. App. P. 4(b); see also Green*, 89 F.3d at 659-60.

**APPEAL No. 06-30022 DISMISSED; APPEAL No. 06-30023
AFFIRMED.**