

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

January 19, 2010

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 09-50570

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PAUL JASON ALVAREZ, also known as Jason Alvarez,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 7:08-CR-219-1  
\_\_\_\_\_

Before HIGGINBOTHAM, CLEMENT and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Pursuant to a plea agreement, Paul Jason Alvarez pleaded guilty to one count of conspiring to distribute and possess with the intent to distribute 50 grams or more of methamphetamine. He was sentenced to 210 months of imprisonment and five years of supervised release. More than 40 days after the entry of judgment, Alvarez filed a notice of appeal and a motion for an extension of time to file an appeal. The district court denied the motion per FED. R. APP. P. 4(b)(4).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Counsel appointed to represent Alvarez has filed a motion to withdraw. In his response to counsel's motion, Alvarez moves for the appointment of new counsel.

This court can dismiss an appeal during consideration of an interlocutory motion if the appeal "is frivolous and entirely without merit." 5TH CIR. R. 42.2. Alvarez did not file a notice of appeal within 10 days after the entry of the criminal judgment. *See* FED. R. APP. P. 4(b)(1)(A)(i). His motion for an extension of time to file an appeal was filed beyond the 30-day time limit for extending the appeal period under FED. R. APP. P. 4(b)(4). Thus, the district court did not err in enforcing the time limitations set forth in FED. R. APP. P. 4(b), and this court may not reverse its decision to do so. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Because the instant appeal is without arguable merit, the appeal is dismissed as frivolous, counsel's motion to withdraw is granted, and Alvarez's motion for the appointment of new counsel is denied. *See* 5TH CIR. R. 42.2.

APPEAL DISMISSED; MOTIONS GRANTED IN PART AND DENIED  
IN PART.