

October 7, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60457
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ALEGRIA-CAMPA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:02-CR-126-1

Before JONES, BARKSDALE, and PRADO, Circuit Judges.

PER CURIAM:*

Court-appointed counsel for Jose Alegria-Campa ("Alegria") has filed a motion seeking leave to withdraw and a brief as required by Anders v. California, 386 U.S. 738 (1967). Counsel has also filed a motion to waive the requirements of FED. R. APP. P. 32(a)(4). Alegria pleaded guilty to illegally re-entering the United States after having been deported, and he was sentenced to 79 months' imprisonment and three years of supervised release.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We examine the basis of our jurisdiction on our own motion. See Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). A timely notice of appeal is a prerequisite to the exercise of appellate jurisdiction, and the lack of a timely notice mandates dismissal of the appeal. United States v. Garcia-Machado, 845 F.2d 492, 493 (5th Cir. 1988). Alegria had 10 days from the entry of the judgment on March 24, 2003, that is until April 7, 2003, to file a timely notice of appeal. See FED. R. APP. P. 4(b)(1)(A). Alegria's notice of appeal, which was filed after entry of the amended judgment and dated April 28, 2003, was untimely. See United States v. Lewis, 921 F.2d 563, 565 (5th Cir. 1991).

A district court may grant a defendant an additional 30 days in which to file a notice of appeal upon a showing of excusable neglect or good cause. See FED. R. APP. P. 4(b)(4). Alegria's notice of appeal, which was filed within this 30-day period, sufficed as a motion for a finding on excusable neglect or good cause. See United States v. Golding, 739 F.2d 183, 184 (5th Cir. 1984).

Accordingly, counsel's motions are held in abeyance and the case is REMANDED to the district court for a finding under FED. R. APP. P. 4(b)(4). Id. Upon making the finding, the district court shall promptly return the case to this court for dismissal or further proceedings, as may be appropriate.

REMANDED; MOTIONS HELD PENDING REMAND.