

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-31082
Conference Calendar

UNITED STATES OF AMERICA,,

Plaintiff-Appellee,

versus

THUAN HUU HUYNH,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 00-CV-514-B
USDC No. 98-CR-71-ALL-B

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Thuan Huu Huynh moves this court for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2255 motion. The motion for COA is DENIED AS MOOT because Huynh did not timely file a notice of appeal. The district court did not abuse its discretion in determining that Huynh's untimely filing of his notice of appeal was not due to excusable neglect. Halicki v. Louisiana Casino Cruises, Inc., 151 F.3d 465, 468-69 (5th Cir. 1998), cert. denied, 526 U.S. 1005

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(1999); United States v. Clark, 51 F.3d 42, 44 (5th Cir. 1995).

Without a finding of excusable neglect, Huynh's notice of appeal filed on August 28, 2000, is untimely, and this court is without jurisdiction over the appeal. FED. R. APP. P. 3(a)(1).

Accordingly, the appeal is DISMISSED.