

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-41169
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR LUIS HINOJOSA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-CR-27-1

September 17, 2001

Before DUHÉ, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:¹

Through counsel, Oscar Luis Hinojosa has appealed his sentence for conspiracy and possession of marijuana with intent to distribute it. Hinojosa, who has been a fugitive since the selection of the petit jury, was tried and sentenced in absentia, pursuant to Fed. R. Crim. P. 43(b). The Government contends that Hinojosa's appeal should be dismissed pursuant to the "fugitive disentitlement doctrine." Inexplicably, defense counsel did not reply to this argument.

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

"[A] long escape, even if it ended before sentencing and appeal, may so delay the onset of appellate proceedings" that dismissal of the appeal would be appropriate. Ortega-Rodriguez v. United States, 507 U.S. 234, 249 (1993). Thus, "appellate courts may exercise [their discretion to dismiss fugitives' appeals] by developing generally applicable rules," which do not need to be uniform among the circuits. Id. at 250-51 nn.23 & 24.

Dismissal of Hinojosa's appeal is appropriate under Ortega-Rodriguez because Hinojosa has had a "long escape" which shows no signs of ending in the foreseeable future. As a result, dismissal of his appeal is supported by enforceability concerns, serves an important deterrent function, and advances "an interest in efficient, dignified appellate practice." Ortega-Rodriguez, 507 U.S. at 242.

APPEAL DISMISSED.