

June 1, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20264
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GABRIEL ROLANDO RODRIGUEZ, also known as
Ariel Macias,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:00-CR-291-1

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Gabriel Rolando Rodriguez seeks to appeal the sentence following his guilty plea conviction of conspiracy to possess with intent to distribute 1000 kilograms or more of marijuana and conspiracy to launder money. Rodriguez did not file a notice of appeal from the judgment entered June 10, 2002. Instead, almost two years later, Rodriguez filed a pro se motion for an out-of-time appeal, which the district court granted.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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] district court does not have the authority to create appellate jurisdiction simply by ordering an out-of-time direct criminal appeal. Compliance with the Federal Rules of Appellate Procedure is imperative." United States v. West, 240 F.3d 456, 459 (5th Cir. 2001). West addresses the proper procedures for granting an out-of-time appeal pursuant to 28 U.S.C. § 2255. See id. at 459-61.

We therefore VACATE the district court's order granting the out-of-time appeal, and we REMAND the case. On remand, the district court should treat Rodriguez's motion for an out-of-time appeal in accordance with West and Castro v. United States, 540 U.S. 375, 383 (2003).

ORDER VACATED; CASE REMANDED.