

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20614

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO RANGEL-OVIEDO, also known as Kiko,
also known as Francisco Oviedo Rangel,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CR-50-1
- - - - -

November 3, 1999

Before POLITZ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:*

We remanded the instant case to the district court for a determination whether Francisco Rangel-Oviedo's delay in filing his notice of appeal was due to excusable neglect.

There is nothing in the record to refute the district court's determination that no excusable neglect existed to justify Rangel's failure to file a timely notice of appeal. See United States v. Clark, 51 F.3d 42, 44 (5th Cir. 1995).

Accordingly, the appeal is DISMISSED for lack of jurisdiction. See United States v. Carr, 979 F.2d 51, 55 (5th Cir. 1992).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The motion by court-appointed counsel for Rangel for leave to withdraw is DENIED as moot.

APPEAL DISMISSED; MOTION TO WITHDRAW DENIED AS MOOT.