

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40362
Summary Calendar

UNITES STATES OF AMERICA,

Plaintiff-Appellee,

versus

SERAFIN VIDAL-MORALES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1-03-CR-768-ALL

Before Davis, Smith, and Dennis, Circuit Judges.

PER CURIAM:*

Serafin Vidal-Morales pleaded guilty to being found in the United States after deportation and was sentenced to 41 months of imprisonment and three years of supervised release. Vidal-Morales appeals the district court's denial of his motion to reconsider sentence for lack of jurisdiction. He also contends that his motion to reconsider was filed within the time for requesting an extension of time to appeal based on excusable neglect and that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

this court should remand this case to the district court for a determination of excusable neglect.

Vidal-Morales' motion sought reconsideration of the district court's sentence, and contrary to Vidal-Morales' contention, his motion does not evince an intent to appeal. Vidal-Morales' request for a remand for a determination of excusable neglect is DENIED. See Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987); Page v. DeLaune, 837 F.2d 233, 237 (5th Cir. 1988).

Because Vidal-Morales' motion for reconsideration was filed more than ten days after the entry of the district court's judgment, the district court was without jurisdiction to address it. United States v. Cook, 670 F.2d 46, 48-49 (5th Cir. 1982). Likewise, the motion for reconsideration was not authorized under FED. R. CRIM. P. 35, and the district court did not err in denying Vidal-Morales' motion to reconsider sentence for lack of jurisdiction. See United States v. Early, 27 F.3d 140, 141-42 (5th Cir. 1994).

Accordingly, the district court's order denying Vidal-Morales' motion to reconsider sentence is AFFIRMED.