

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

July 23, 2008

No. 07-51437
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

VICTOR ALBERTO GONZALES-ROBLES, also known as Victor Gonzalez, also known as Victor Gonzalez-Robles, also known as Victor H Gonzales, also known as Victor Gonzales,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:07-CR-178-ALL

Before JOLLY, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Victor Alberto Gonzales-Robles (Gonzales) pleaded guilty to one count of conspiracy to import 50 kilograms or more of marijuana; he was sentenced to 97 months of imprisonment. The district court's judgment was entered on November 19, 2007, and the ten-day period for filing notice of appeal in a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

criminal proceeding expired on December 4, 2007. FED. R. APP. P. 4(b)(1)(A). Gonzales's notice of appeal was filed on December 5, 2007.

Gonzales's failure to comply with the time limitations imposed by Federal Rule of Appellate Procedure 4(b) does not deprive this court of jurisdiction over his appeal. See *United States v. Martinez*, 496 F.3d 387, 388-89 (5th Cir. 2007). However, compliance with Rule 4(b)(1)(A) is required so long as the government has not waived its application. *Id.*

A district court may grant a defendant an additional 30 days in which to file a notice of appeal upon a showing of excusable neglect or good cause. FED. R. APP. P. 4(b)(4). Gonzales's notice of appeal, which was filed within this additional 30-day period, suffices as a motion for a finding on excusable neglect or good cause. See *United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984). This case is remanded to the district court for the limited purpose of determining whether excusable neglect or good cause entitles Gonzales to an extension of time to file a notice of appeal.

REMANDED.