

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 20, 2009

Charles R. Fulbruge III
Clerk

No. 08-40996
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JUAN MANUEL ESPARZA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:08-CR-40-ALL

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Juan Manuel Esparza pleaded guilty pursuant to a written plea agreement to conspiracy to possess with intent to distribute a quantity in excess of five kilograms of cocaine and to possession with intent to distribute in excess of five kilograms of cocaine and was sentenced to 17-year concurrent terms of imprisonment and five years of supervised release. Almost four months after the judgment of conviction was entered, Esparza filed a notice of appeal.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 district court ruled that Esparza's notice of appeal was filed "out of time." In addition, the district court granted Esparza leave to proceed in forma pauperis on appeal but denied his request for appointment of counsel.

Esparza now moves this court for the appointment of counsel. This court can dismiss an appeal during consideration of an interlocutory motion if the appeal "is frivolous and entirely without merit." 5TH CIR. R. 42.2. Esparza did not file a notice of appeal within 10 days after the entry of the criminal judgment, *see* FED. R. APP. P. 4(b)(1)(A), or even within the time for extending the appeal period under FED. R. APP. P. 4(b)(4). Thus, the district court did not err in enforcing the time limitations set forth in Rule 4(b), and this court may not reverse its decision to do so. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Because the instant appeal is without arguable merit, Esparza's motion for the appointment of appellate counsel is denied, and the appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2.

MOTION DENIED; APPEAL DISMISSED.