IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-40036
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE MAURILLO DOMINGUEZ-GARCIA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:08-CR-45-ALL

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:[*]

Jose Maurillo Dominguez-Garcia (Dominguez) pleaded guilty to being
unlawfully present in the United States following removal and was sentenced
to 27 months of imprisonment and three years of supervised release. Almost
seven months after the entry of judgment, Dominguez filed a notice of appeal.

The magistrate judge granted the motion to withdraw filed by counsel
appointed to represent Dominguez in the district court. The magistrate judge

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 R. 47.5, the court has determined that this opinion should not
be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

declined to appoint Dominguez replacement counsel for appeal, and she noted that Dominguez's notice of appeal was untimely.

Dominguez 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. Dominguez 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). Dominguez is not entitled to have the untimeliness of his notice of appeal disregarded. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Because the instant appeal is without arguable merit, Dominguez'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.