

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

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2009

Charles R. Fulbruge III
Clerk

No. 09-40284
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JUAN ALFONSO MARTINEZ-LUNA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:08-CR-217-1

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:*

Juan Alfonso Martinez-Luna (Martinez) pleaded guilty to being an alien found in the United States unlawfully after deportation and after having previously been convicted of an aggravated felony offense pursuant to a plea agreement containing an appellate waiver. He was sentenced to 66 months of imprisonment and three years of supervised release. More than six months after judgment was entered, Martinez filed a notice of appeal. The district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

construed Martinez's notice of appeal as a request for leave to file an out-of-time appeal and denied it.

The Federal Public Defender (FPD) appointed to represent Martinez on appeal has filed an ex parte motion to withdraw. In response, Martinez has requested the appointment of counsel to represent him on appeal. Martinez did not file a notice of appeal within 10 days after entry of the criminal judgment, see FED. R. APP. P. 4(b)(1)(A), or within the 30-day window for extending the time to appeal under FED. R. APP. P. 4(b)(4). In light of the district court's enforcement of the time limitations in Rule 4, the untimeliness of the notice of appeal may not be disregarded. See *United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Because the appeal is untimely and without arguable merit, the FPD's motion to withdraw is granted, Martinez's motion for the appointment of counsel is denied, and the appeal is dismissed as frivolous. See 5TH CIR. R. 42.2.

MOTIONS DENIED; APPEAL DISMISSED.