

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

United States Court of Appeals
Fifth Circuit

FILED

February 11, 2010

Charles R. Fulbruge III
Clerk

No. 09-50873

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAUL VIVAR-VILLARREAL,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 3:07-CR-676-2

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

After Raul Vivar-Villarreal pleaded true to allegations that he violated the conditions of supervised release by committing a new offense, 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

revoked his supervised release and sentenced him to 15 months in prison, 12 months of which are to be served consecutively to the 198-month sentence imposed for the new offense. Eighteen months later, Vivar-Villarreal filed a *pro se* notice of appeal and a motion for leave to proceed *in forma pauperis* (“IFP”) on appeal.

The district court treated the notice of appeal as a motion to extend the time for filing an appeal and denied it because it was not filed within 30 days of the expiration of the appeal period as required by FED. R. APP. P. 4(b)(4) (2008). The court also denied Vivar-Villarreal’s IFP motion.

Vivar-Villarreal moves for appointment of appellate counsel and for leave to proceed IFP on appeal. We may dismiss an appeal during consideration of an interlocutory motion if the appeal “is frivolous and entirely without merit.” 5TH CIR. R. 42.2. Vivar-Villarreal did not file a notice of appeal within ten days after the entry of the criminal judgment, *see* FED. R. APP. P. 4(b)(1)(A) (2008), or even within the time for extending the appeal period under FED. R. APP. P. 4(b)(4) (2008). He 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). The motions are DENIED, and the delinquent appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.