

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

United States Court of Appeals
Fifth Circuit

FILED

June 18, 2010

Lyle W. Cayce
Clerk

No. 10-40064

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSUE DANIEL JIMENEZ DE LEON,
Also Known as Josue Daniel Rodriguez Jimenez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. 1:08-CR-926-1

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Josue Jimenez De Leon pleaded guilty pursuant to a written plea agree-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

ment. Nearly eleven months after entry of judgment, he filed a notice of appeal in which he also requested the appointment of counsel and for leave to proceed *in forma pauperis* (“IFP”). Finding that the judgment of conviction and sentence had become unappealable when no notice of appeal was timely filed, the district court denied the request for appointed counsel but granted IFP status.

Jimenez De Leon now moves for appointment of counsel. This court may dismiss an appeal when considering an interlocutory motion if the appeal “is frivolous and entirely without merit.” 5TH CIR. R. 42.2. Jimenez De Leon did not file a notice of appeal from the judgment of conviction and sentence within 10 days after entry of judgment. *See* FED. R. APP. P. 4(b)(1)(A)(i). His appeal also was noticed beyond the 30-day time limit for extending the appeal period under FED. R. APP. P. 4(b)(4). 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). Because the appeal is without arguable merit, we deny appointment of counsel and dismiss the appeal as frivolous. *See* 5TH CIR. R. 42.2.

MOTION DENIED; APPEAL DISMISSED.