

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

United States Court of Appeals  
Fifth Circuit

**FILED**

May 10, 2011

Lyle W. Cayce  
Clerk

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No. 10-41241  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FRANCISCO GUTIERREZ-PINEDA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:09-CR-697-1

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Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:\*

Francisco Gutierrez-Pineda (Gutierrez) pleaded guilty pursuant to a written plea agreement to possession with intent to distribute cocaine, and the district court sentenced him to 108 months of imprisonment. More than five months after the entry of the judgment, he filed a notice of appeal. The district court denied Gutierrez leave to proceed in forma pauperis (IFP) on appeal, certifying that the appeal was not taken in good faith in light of the untimeliness of his notice of appeal.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Gutierrez moves this court for appointment of counsel and leave to appeal IFP. We may dismiss an appeal when considering an interlocutory motion if the appeal “is frivolous and entirely without merit.” 5TH CIR. R. 42.2. Gutierrez did not file his notice of appeal within 14 days after the entry of the judgment as required by Federal Rule of Appellate Procedure 4(b)(1)(A)(i) or within Rule 4(b)(4)’s 30-day window for seeking an extension of time. 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). Accordingly, we deny the motions for appointment of counsel and leave to appeal IFP, and we dismiss the appeal as frivolous. *See* 5TH CIR. R. 42.2.

MOTIONS DENIED; APPEAL DISMISSED.