

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

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No. 13-40962  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

April 9, 2014

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAMES DARRELL LISTER, JR., also known as Wee Wee,

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:07-CR-95-6

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Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

James Darrell Lister, Jr., federal prisoner # 14979-078, was convicted by guilty plea of possession with intent to distribute cocaine base and was sentenced to 188 months of imprisonment and four years of supervised release. He now requests leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion, in which he sought a sentence reduction pursuant to the Fair Sentencing Act of 2010 (FSA) and

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Amendment 750 to the Sentencing Guidelines. By moving to proceed IFP, Lister challenges the district court's certification that the appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

The Government has filed a motion to summarily dismiss this appeal due to Lister's failure to file a timely notice of appeal or, in the alternative, to summarily affirm the district court's order or, in the further alternative, to grant it a 30-day extension to file an appellate brief. The district court's order denying § 3582(c)(2) relief was entered on July 9, 2013. Lister's notice of appeal, dated August 25, 2013, was not only untimely but also beyond the time during which the district court could have extended the time for filing a notice of appeal. *See* FED. R. APP. P. 4(b)(1)(A)(i), (b)(4). Although Rule 4(b) is not jurisdictional, a defendant may not have his untimeliness disregarded when the Government objects. *Eberhart v. United States*, 546 U.S. 12, 18 (2005); *United States v. Garcia-Cabrera*, 472 F. App'x 340, 341 (5th Cir. 2012).

Accordingly, the Government's motion for summary dismissal is GRANTED, and the appeal is DISMISSED as untimely. The Government's alternative motions for summary affirmance and an extension of time to file a brief are DENIED. Lister's motion to proceed IFP is DENIED.