

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

No. 14-40599
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 14, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CARLOS MARTINEZ-TELLO,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:08-CR-1248-2

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Carlos Martinez-Tello, federal prisoner # 82078-079, filed a motion to dismiss the indictment wherein he argued that the district court lacked exclusive legislative and subject matter jurisdiction over the criminal case that resulted in his 2010 conviction of possession with intent to distribute approximately 14.22 kilograms of cocaine. The district court denied the motion as unmeritorious and denied Martinez-Tello's motion to proceed in forma

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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pauperis (IFP) on appeal and certified that the appeal was not taken in good faith. Martinez-Tello challenges the denial of his IFP motion and the certification that the appeal was not taken in good faith.

This court's inquiry into whether an appeal is taken in good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

Martinez-Tello's notice of appeal from the denial of his motion was untimely. *See* FED. R. APP. P. 4. His assertion that the district court failed to notify him of the denial of his motion is belied by the record. Accordingly, Martinez-Tello's motion to proceed IFP on appeal is denied and the appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.