

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

No. 15-41599
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

ISRAEL GARZA,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:13-CR-1064-1

Before SMITH, CLEMENT, and GRAVES, Circuit Judges.

PER CURIAM:*

Israel Garza contests his 240-month prison term for possession with

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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intent to distribute more than five kilograms of cocaine. He contends that the district court could sentence him to only a ten-year maximum because the information filed under 21 U.S.C. § 851 indicated that the enhancement was being sought under 21 U.S.C. § 841(b)(1)(b). The government moves to dismiss the appeal on the basis that Garza failed to file a timely notice of appeal.

The record supports the government's contention. Garza filed his notice of appeal almost eighteen months after entry of judgment, well beyond the fourteen days that is permitted and also well beyond the time during which the district court could have granted an extension on a showing of either excusable neglect or good cause. *See* FED. R. APP. P. 4(b)(1)(A)(i), (b)(4); *United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000). Although the untimely filing of an appeal in a criminal case is not jurisdictional, *see United States v. Martinez*, 496 F.3d 387, 388–89 (5th Cir. 2007), this court will not disregard untimeliness where the government raises the issue, *see Eberhart v. United States*, 546 U.S. 12, 18 (2005).

The motion to dismiss is GRANTED, and the appeal is DISMISSED as untimely.