

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

United States Court of Appeals
Fifth Circuit

FILED

June 15, 2016

Lyle W. Cayce
Clerk

No. 15-41725

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ELEAZAR ACOSTA-MOSQUEDA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:15-CR-7-3

Before GRAVES, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Eleazar Acosta-Mosqueda pleaded guilty, pursuant to a written plea agreement, to conspiracy to transport aliens within the United States, and he was sentenced to 60 months in prison and to three years of supervised release. The district court's judgment was entered on October 7, 2015. Acosta-Mosqueda filed a pro se notice of appeal no earlier than December 8, 2015, and sought leave to proceed in forma pauperis (IFP) on appeal. Because the notice of appeal was not filed within 14 days of the entry of judgment or within the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 15-41725

30-day period for filing an extension of time to file a notice of appeal, the district court determined that the notice of appeal was untimely and denied the motion to proceed IFP on that basis. *See* FED. R. APP. P. 4(b)(1)(A), (b)(4).

This court can dismiss an appeal during consideration of an interlocutory motion if the appeal “is frivolous and entirely without merit.” 5TH CIR. R. 42.2. Acosta-Mosqueda did not file a notice of appeal within 14 days after the entry of the criminal judgment, and his notice of appeal was filed beyond the time for extending the appeal period. *See* FED. R. APP. P. 4(b)(1)(A), (b)(4). Thus, the district court did not err in enforcing the time limitations set forth in Rule 4(b), and denying the IFP motion, and this court may not reverse its decision to do so. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Because the instant appeal is without arguable merit, Acosta-Mosqueda’s motions to proceed IFP and for the appointment of counsel are denied, and the appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2.

APPEAL DISMISSED; MOTIONS DENIED.