

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

No. 18-40214
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 8, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO ALBERTO TREVINO, also known as Grunon,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:11-CR-1667-2

Before DAVIS, HAYNES, and HO, Circuit Judges.

PER CURIAM:*

Mario Alberto Trevino, federal prisoner # 00822-379, appeals the denial of his 18 U.S.C. § 3582(c) motion for reduction of sentence after his conviction and 135-month sentence for conspiracy to possess with intent to distribute more than 1,000 kilograms of marijuana and money laundering. He argues that the district court abused its discretion in denying his § 3582(c) motion because it failed to follow the two-step process outlined in *Dillon v. United*

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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States, 560 U.S. 817, 827 (2010). The Government seeks the dismissal of the appeal because Trevino failed to file a timely notice of appeal.

The record supports the Government's contention. Trevino filed his notice of appeal after the expiration of the time for filing a timely appeal and beyond the time during which the district court could have granted him an extension upon 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). While the untimely filing of a notice of 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 enforce the mandatory time limit by dismissing the appeal where, as here, the Government timely raises the issue. See *United States v. Hernandez-Gomez*, 795 F.3d 510, 511 (5th Cir. 2015).

Accordingly, Trevino's appeal is DISMISSED as untimely. His motion for leave to file a supplemental brief is GRANTED.