

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

\_\_\_\_\_  
No. 18-40370  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

May 23, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS CARRIZALES-SEGURA,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:17-CR-648-1  
\_\_\_\_\_

Before DENNIS, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:\*

Jesus Carrizales-Segura, federal prisoner # 86295-179, pleaded guilty to being found in the United States after a previous deportation and was sentenced to 60 months in prison with no supervised release term. The district court's judgment was entered on September 26, 2017. More than six months later, in April and May 2018, Carrizales-Segura filed several pro se pleadings in the district court, including a notice of appeal.

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Because the notice of appeal was filed well beyond the time for appealing and the time for extending the appeal deadline, *see* FED. R. APP. P. 4(b)(1)(A), (b)(4), the district court found that the appeal was not taken in good faith and denied Carrizales-Segura's motions. *See* FED. R. APP. P. 24(a)(3). Carrizales-Segura now moves this court for leave to proceed IFP and appointment of counsel on appeal.

We can dismiss an appeal during consideration of an interlocutory motion if the appeal "is frivolous and entirely without merit." 5TH CIR. R. 42.2. Although the time limit for appealing in a criminal case is not jurisdictional, *United States v. Martinez*, 496 F.3d 387, 388-89 (5th Cir. 2007), a defendant is not entitled to have his untimeliness disregarded, *United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Where the district court enforces an inflexible claim processing rule, this court may not reverse that decision unless the defendant shows that the district court erred, "[i]rrespective of whether the government noted the untimeliness in the district court." *Id.* Carrizales-Segura makes no argument here that the appeal is timely or that his untimeliness should be disregarded. Furthermore, there is no indication in the record that there is a nonfrivolous basis for making such arguments. *See also Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 715 (2019).

In light of the foregoing, Carrizales-Segura's appeal is frivolous because it is untimely. *See United States v. Pesina-Rodriguez*, 825 F.3d 787, 788 (5th Cir. 2016). Consequently, the appeal is DISMISSED, *see* 5TH CIR. R. 42.2, and the motions for leave to proceed IFP and appointment of counsel are DENIED.

APPEAL DISMISSED; MOTIONS DENIED.