

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

United States Court of Appeals
Fifth Circuit

FILED

May 6, 2019

Lyle W. Cayce
Clerk

No. 18-50275
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARNOLDO LOPEZ, also known as Arnoldo Louis Lopez, also known as Looney,
also known as Arnoldo L. Lopez,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:17-CV-1024
USDC No. 5:12-CR-944-3

Before SOUTHWICK, HAYNES, and HO, Circuit Judges.

PER CURIAM:*

Arnoldo Lopez, federal prisoner # 05282-380, was convicted of possessing with the intent to distribute a controlled substance and possessing a firearm in furtherance of a drug trafficking crime. He subsequently filed a 28 U.S.C. § 2255 motion. While that motion was pending, Lopez filed a notice of appeal and requested leave to proceed in forma pauperis (IFP) on appeal. Citing 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

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lack of an appealable judgment, the district court denied Lopez leave to proceed IFP and certified under 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith. It later denied Lopez's § 2255 motion.

Before the court is Lopez's motion for leave to proceed IFP on appeal challenging the district court's certification decision. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). Lopez has not addressed the district court's reasons for certifying that any appeal would not be taken in good faith. However, "[t]his Court must examine the basis of its jurisdiction, on its own motion, if necessary." *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987).

Lopez's notice of appeal was timely only as to the district court's order granting the government an extension of time to respond to Lopez's § 2255 motion. *See* FED. R. APP. P. 4(a)(1)(B). However, Lopez's notice of appeal does not reference that order, and nothing indicates that Lopez intended to appeal the ruling. *See* FED. R. APP. P. 3(c) (providing that a notice of appeal must designate the judgment or order being appealed).

Lopez stated in his notice of appeal that he intended to appeal the district court's denial of his § 2255 motion. However, his notice of appeal was premature as to district court's final judgment denying Lopez's § 2255 relief. It does not confer appellate jurisdiction over that decision. *See FirstTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269, 276-77 (1991).

Lopez's motion for leave to proceed IFP on appeal is DENIED. His appeal is DISMISSED for lack of jurisdiction.