

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

No. 18-50418

United States Court of Appeals
Fifth Circuit

FILED

August 28, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE ALFREDO SANDOVAL-SIFUENTES,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 3:06-CR-1421-1

Before SOUTHWICK, HAYNES, and HO, Circuit Judges.

PER CURIAM:*

Jose Alfredo Sandoval-Sifuentes, federal prisoner # 23741-180, filed a motion in the district court purporting to arise under 18 U.S.C. § 3742. The district court construed the motion as a notice of appeal from Sandoval-Sifuentes's judgment of conviction and sentence that was entered in 2007, determined that the notice was untimely, and transferred the matter to this court. Sandoval-Sifuentes has filed a motion for leave to proceed in forma pauperis (IFP) on appeal and a motion to proceed pro se.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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The document filed by Sandoval-Sifuentes was filed more than ten years after entry of judgment, well beyond the time for appealing and the time for extending the appeal period. *See* FED. R. APP. P. 4(b). 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).

Moreover, Sandoval-Sifuentes filed a direct appeal from his conviction, and this court affirmed the judgment in 2008. *United States v. Sifuentes-Sandoval*, 290 F. App'x 695 (5th Cir. 2008). Although his document was styled as falling under § 3742, that section does not provide a jurisdictional basis for a post-appeal motion. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). The document purportedly filed under § 3742 is a meaningless, unauthorized motion over which the courts lack jurisdiction. *See Early*, 27 F.3d at 142.

Accordingly, Sandoval-Sifuentes's appeal is DISMISSED. *See* 5TH CIR. R. 42.2. His motion for leave to proceed IFP on appeal and his motion to proceed pro se are DENIED.