

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

United States Court of Appeals
Fifth Circuit

FILED

December 5, 2019

Lyle W. Cayce
Clerk

No. 19-40049
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE MARIA COVARRUBIAS,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 2:12-CR-516-1

Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:*

Jose Maria Covarrubias, federal prisoner # 94856-279, was convicted following his guilty plea to conspiracy to possess with intent to distribute more than 1,000 kilograms of marijuana and two counts of aiding and abetting with intent to distribute marijuana. The district court imposed a sentence of 200 months of imprisonment on each count, the terms to run concurrently.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-40049

Covarrubias has filed a motion to proceed in forma pauperis (IFP) to appeal the district court's denial of his second motion for reconsideration of the district court's denial of his motion for reduction of his sentence pursuant to 18 U.S.C. § 3582 and Amendment 782 of the Guidelines. This court may authorize a prisoner to proceed IFP on appeal if he demonstrates that he is a pauper and that his appeal presents a nonfrivolous issue. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982); *see* FED. R. APP. P. 24(a)(1). With respect to whether the appeal is frivolous, the appellant must show that the appeal "involves legal points arguable on their merits." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

Covarrubias has failed to address in his IFP motion and brief the district court's determination that he failed to show excusable neglect or cause for filing an untimely notice of appeal, a dispositive issue on appeal. *See United States v. Martinez*, 496 F.3d 387, 388-89 (5th Cir. 2007); FED. R. APP. P. 4(b)(4); *United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). He has also failed to address the district court's conclusion that it was not authorized to grant Covarrubias with an extension of time to proceed IFP on appeal based on Covarrubias's second untimely notice of appeal because it was not filed within the period for filing such motion pursuant to Federal Rule of Appellate Procedure 4(b)(4). *See United States v. Awalt*, 728 F.2d 704, 705 (5th Cir. 1984). Thus, he has abandoned those arguments on appeal. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Covarrubias has not shown that the district court's rulings constituted an abuse of discretion. *See United States v. Clark*, 193 F.3d 845, 846 (5th Cir. 1999).

Covarrubias has not shown that he will raise a nonfrivolous issue on appeal. *See Howard*, 707 F.2d at 220. His appeal is DISMISSED as frivolous, and his motion for leave to proceed IFP on appeal is DENIED. *See* 5TH CIR. R. 42.2.