

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

No. 19-50083

United States Court of Appeals
Fifth Circuit

FILED

July 10, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RANDY DOMINGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:18-CR-125-1

Before STEWART, GRAVES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

With the assistance of appointed counsel, Randy Dominguez moves this court for leave to proceed in forma pauperis (IFP) in this direct criminal appeal following the district court's denial of IFP status. He contends that the district court erred by not construing his pro se motion for leave to file an out-of-time appeal as a § 2255 motion raising a claim of ineffective assistance of counsel based on his counsel's failure to file a timely notice of appeal.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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We must assess our own jurisdiction, sua sponte if necessary. *United States v. Villanueva-Diaz*, 634 F.3d 844, 848 (5th Cir. 2011). “An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4.” FED. R. APP. P. 3(a)(1). The sole appellate issue that Dominguez raises in his brief in support of his IFP motion relates to the propriety of the district court’s order denying his motion for leave to file an out-of-time appeal. Because Dominguez has not filed a notice of appeal or any document that could be construed as a timely notice of appeal from the district court’s order denying his motion for leave to file an out-of-time appeal, this court does not have jurisdiction to consider it. *See* FED. R. APP. P. 3(a)(1).

Dominguez does not point to any nonfrivolous issue that he seeks to raise in his appeal of the judgment of conviction. Accordingly, he has not shown that his appeal is taken in good faith. *See United States v. Boutwell*, 896 F.2d 884, 889-90 (5th Cir. 1990); *Howard v. King*, 707 F.2d 215, 220 (5th Cir.1983).

The motion for leave to proceed IFP on appeal is DENIED. Dominguez’s appeal of the criminal judgment is DISMISSED as frivolous pursuant to Fifth Circuit Rule 42.2. To the extent Dominguez is appealing the district court’s denial of his motion for leave to file an out-of-time appeal, the appeal is DISMISSED for lack of jurisdiction. Counsel’s motion to withdraw is DENIED as moot.