

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 9, 2020

Lyle W. Cayce
Clerk

No. 19-50142
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RAFAEL RENDON-ARREOLA, *also known as* RAFAEL A. RENDON, *also known as* RAFAEL RENDON, *also known as* RAFAEL ARREOLA RENDON, *also known as* RAFAEL ARREOLA-RENDON, *also known as* RAFAEL R. ARREOLA, *also known as* RAFAEL RENDON ARREOLA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:15-CR-705-4

Before JONES, BARKSDALE, and STEWART, *Circuit Judges.*

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 19-50142

Rafael Rendon-Arreola pleaded guilty to conspiracy to distribute, and possession with intent to distribute, 500 grams or more methamphetamine, in violation 21 U.S.C. §§ 846, 841(a)(1), and (b)(1)(A), and was sentenced to, *inter alia*, 120 months' imprisonment. He asserts the factual basis was insufficient to support his guilty plea. In response, the Government maintains that the appeal should be dismissed as untimely.

On threshold issue of timeliness, Rendon filed his notice of appeal nearly two years after expiration of the time for filing a timely appeal. Fed. R. App. P. 4(b)(3). He similarly missed, by nearly two years, the opportunity to receive an extension from the district court upon a showing of either excusable neglect or good cause. Fed. R. App. P. 4 (b)(4). In his opening brief on appeal, Rendon acknowledges his appeal is untimely, but urges the Government waived the time bar by failing to invoke it prior to his appeal.

While the timely filing of an appeal in a criminal case is not jurisdictional, it is mandatory. *United States v. Pesina-Rodriguez*, 825 F.3d 787, 788 (5th Cir. 2016). Our court enforces the mandatory time limit by dismissing an appeal where the Government raises the issue. *See United States v. Hernandez-Gomez*, 795 F.3d 510, 511 (5th Cir. 2015). Because the Government does so in its response brief, it did not waive the time bar.

DISMISSED.