

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 14, 2020

Lyle W. Cayce
Clerk

No. 20-30338

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CEDRIC CONNER,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:12-CR-69-1

Before DENNIS, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Cedric Conner, federal prisoner # 15915-035, seeks appointment of counsel in his appeal of the 230-month prison sentence imposed in 2012 following his guilty-plea conviction for producing child pornography. *See* 18 U.S.C. § 2251(a). The district court denied Conner authorization to proceed in forma pauperis on appeal, concluding that the untimely appeal was not

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 20-30338

taken in good faith, and the Government has moved to dismiss the appeal as untimely.

If an appeal “is frivolous and entirely without merit,” we can dismiss the appeal during consideration of an interlocutory motion. 5TH CIR. R. 42.2. Although the time limit for appealing in a criminal case is not jurisdictional, it is mandatory. *United States v. Hernandez-Gomez*, 795 F.3d 510, 511 (5th Cir. 2015). Moreover, although the Government may waive the time limitation, the Government does not do so where, as here, the Government files a motion to dismiss “with or before the Government’s first substantive filing.” *Id.*

Conner makes no argument that the appeal is timely or that his untimeliness should be disregarded. Furthermore, there is no indication in the record that there is a nonfrivolous basis for making such arguments. *See Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 715 (2019). Conner’s appeal, therefore, is frivolous because it is untimely. *See United States v. Pesina-Rodriguez*, 825 F.3d 787, 788 (5th Cir. 2016).

Accordingly, the Government’s motion to dismiss is GRANTED, *see Hernandez-Gomez*, 795 F.3d at 511, the appeal is DISMISSED, *see* 5TH CIR. R. 42.2, and the motion for the appointment of counsel is DENIED.

In a letter submitted to this court, Conner indicates that he seeks a compassionate release through a sentence reduction. Section 3582(c)(1)(A) of title 18 of the United States Code provides for a defendant to seek such release initially through the Bureau of Prisons. *See United States v. Franco*, ___ F.3d ___, No. 20-60473, 2020 WL 5249369, at *1 (5th Cir. Sept. 3, 2020). To the extent Conner moves this court for such compassionate release, therefore, the motion is DENIED WITHOUT PREJUDICE to Conner refiling a motion in the district court pursuant to the process set forth in § 3582(c)(1)(A). *See id.* at *3.