

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 4, 2022

Lyle W. Cayce
Clerk

No. 22-50044
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE RODOLFO ESCAJEDA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:06-CR-2507-2

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:*

Jose Rodolfo Escajeda, federal prisoner # 69445-280, appeals the district court's denial of his motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). In response, the Government moves for the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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dismissal of the appeal as untimely or, alternatively, for an extension of time to file its brief.

A notice of appeal in a criminal case must be filed within 14 days of the entry of the judgment or order being appealed. FED. R. APP. P. 4(b)(1)(A)(i); *United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000) (stating that a motion for reduction of sentence under § 3582(c)(2) is a step in a criminal case). The district court may extend the time “for a period not to exceed 30 days from the expiration of the time otherwise prescribed” if the district court finds excusable neglect or good cause, FED. R. APP. P. 4(b)(4), and we will treat a late notice of appeal filed within the additional 30-day period as a motion for a determination whether the notice of appeal should be considered timely due to excusable neglect or good cause, *United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984).

The order Escajeda seeks to appeal was entered on December 16, 2020. Escajeda filed his notice of appeal in January 2022, and soon thereafter filed a motion for leave to proceed in forma pauperis (IFP), which was granted by a magistrate judge on February 4, 2022.

While not jurisdictional, the time limits for filing a notice of appeal in a criminal case are “mandatory claims-processing rules.” *United States v. Pesina-Rodriguez*, 825 F.3d 787, 788 (5th Cir. 2016). Where, as in this case, the untimeliness of a notice of appeal is properly invoked, the appeal is foreclosed. *See id.*

Accordingly, the Government’s motion to dismiss the appeal as untimely is GRANTED, the Government’s alternative motion for an extension of the briefing period is DENIED, and this appeal is DISMISSED.