

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-4882  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiffs-Appellees,

VERSUS

PAUL DANA WILLIAMS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(CR4 92 34)

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March 26, 1993

Before KING, DAVIS and WILLIAMS, Circuit Judges.

PER CURIAM:<sup>1</sup>

Paul Dana Williams was convicted of kidnapping, possession of a firearm by a felon, and carrying a firearm in relation to a crime of violence. He was sentenced to 420 months imprisonment. He filed a notice of appeal from the judgment on June 2, 1992. The case caption for this case reads "Paul Dana Williams, a/k/a Paul William Dana." The appeal, docketed as No. 92-4671, is currently

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<sup>1</sup>Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

pending.

On June 30, 1992, Williams filed a "Motion to Correct Name of Defendant" requesting that the district court change the case caption to read "Paul William Dana" because he legally changed his name in July 1987. The district court denied the motion. The record does not explicitly indicate when the order was entered, but it was file-stamped on July 24, 1992, and was docketed on July 27, 1992. Proceeding **pro se**, Williams filed his notice of appeal from this order on August 18, 1992. This appeal was docketed as No. 92-4882.

In criminal cases a notice of appeal must be filed within ten days of the entry of the order appealed. Fed. R. App. R. 4(b). Upon a finding a excusable neglect, however, the district court may extend the period for filing a notice of appeal by an additional 30 days. **Id.** In general, if a defendant files a notice of appeal within this forty-day period this court treats the notice of appeal as a motion to extend the period for filing a notice of appeal because of excusable neglect. **United States v. Golding**, 739 F.2d 183, 184 (5th Cir. 1984).

Williams filed his notice of appeal more than ten days but less than forty days after the entry of judgment, and therefore the case ordinarily would be remanded to the district court for a determination whether the notice of appeal should be deemed timely under Rule 4(b). **Golding**, 739 F.2d at 184. In this case, however, the appeal is patently frivolous. We therefore decline to remand the case to the district court for a determination of excusable

neglect. **See United States v. Winn**, 948 F.2d 145, 153 (5th Cir. 1991), **cert. denied**, 112 S.Ct. 1599 (1992) (Although a timely notice of appeal is a prerequisite to the exercise of jurisdiction in this court, it is not jurisdictional). Because the appeal is frivolous it is dismissed.

APPEAL DISMISSED.