

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2458  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NORBERTO SORIA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-92-3481 (CR-H-90-9)

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(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

A defendant has sixty days in which to file notice of appeal from the denial of a 28 U.S.C. § 2255 motion. See Rules Governing Section 2255 Proceedings, Rule 11; Fed. R. App. P. 4(a). Notice of appeal was filed well beyond the period for filing notice of appeal from the district court's denial of Norberto Soria's § 2255 motion.

After the passing of this sixty-day period, Soria's counsel filed a "request for evidentiary hearing," a request which asked for reconsideration of the court's earlier judgment and which

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

specifically mentioned two of Soria's claims of ineffective assistance of counsel raised in his § 2255 motion. Because this motion for reconsideration was served more than ten days after entry of judgment and because it challenges the correctness of that judgment, it is treated as a motion pursuant to Fed. R. Civ. P. 60(b). Harcon Barge Co., Inc. v. D & G Boat Rentals, Inc., 784 F.2d 665, 667 (5th Cir.) (en banc), cert. denied, 479 U.S. 930 (1986). The underlying judgment is not brought up for review. See Harrison v. Byrd, 765 F.2d 501, 503 (5th Cir. 1985). Notice of appeal is timely as to the district court's denial of the Rule 60(b) motion. We review for abuse of discretion. See Pease v. Pakhoed Corp., 980 F.3d 995, 998 (5th Cir. 1993).

The one claim of ineffective assistance raised on appeal was not mentioned in Soria's Rule 60(b) motion. "[A] Rule 60(b) motion may not substitute for a timely appeal" from the underlying judgment. United States v. O'Neil, 709 F.2d 361, 372 (5th Cir. 1983). Therefore, Soria has not shown that the district court abused its discretion in denying the Rule 60(b) motion. See Huff v. Int'l Longshoremen's Ass'n, Local #24, 799 F.3d 1087, 1091 (5th Cir. 1986).

AFFIRMED.