

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8862
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROMAN GONZALEZ LOPEZ,
a/k/a R.G. Lopez

Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Texas
(A-92-CR-215)

(March 18, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Roman Gonzalez Lopez appeals the court's detention order pending trial which is set for March 21, 1994. Lopez is charged with conspiracy to distribute heroin, distribution of heroin, money laundering and managing and controlling a building for the purpose of unlawfully distributing a controlled substance. Following at least two hearings before a magistrate judge, the magistrate judge and then the district court denied Lopez' release on bail pending

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

trial. The final order of the district court was entered on November 19, 1993, and Lopez filed an untimely notice of appeal on December 6, 1993. Because Lopez had filed his notice of appeal within the additional thirty-day period in which to file a notice of appeal provided by Fed. R. of App. P. 4(b) we remanded the case to the district court to determine whether the defendant's untimely filing of the notice of appeal was due to excusable neglect.

Lopez, in response to an order from the district court, argued that his appeal was not timely filed because counsel had erroneously relied on Fed. R. Crim. P. 45 instead of Fed. R. of App. P. 4(b) in computing the time for filing the notice of appeal. The district court denied the motion finding that "the miscalculation of time alone does not permit the court to make a finding of excusable neglect."

The district court did not abuse its discretion in denying the extension of time within which to appeal. In **Allied Steel v. City of Abilene**, 909 F.2d 139 (5th Cir. 1990) we held that the district court abused its discretion in finding excusable neglect and dismissed the appeal in a civil case for failure to file a timely appeal under Rule 4(a), 909 F.2d at 143. We stated that "the fact that a party represented by an attorney misconstrues a rule does not raise such party's error to the level of excusable neglect." The Seventh Circuit in **United States v. Douglas** held that "failure to understand and comply with the rule governing appeals to this court will virtually never qualify as excusable neglect under Rule 4(b)." 874 F.2d at 1163, n.31.

Because the appeal from the district court's order is untimely, the appeal must be dismissed.

APPEAL DISMISSED.