

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40526
Conference Calendar

RUBEN S. FLORES,

Plaintiff-Appellant,

versus

SECRETARY OF THE NAVY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-C-93-150
- - - - -

April 18, 1996

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Ruben S. Flores appeals from the district court's stay ruling, pending appeal, of his successive postjudgment motions in an action under Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e. Flores argues that the district court erred in denying his motion for extension of time for service in light of Fed. R. Civ. P. 4(m) and (i). He argues that the district court erred in not ruling on his postjudgment motions and in finding that the Attorney General had not been served. Flores's notice of appeal was filed almost six months after the district court's last ruling, the refusal to rule on the postjudgment motions during the pendency of the appeal.

Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

This court has does not jurisdiction because either the notice of appeal is too late or the refusal order is unappealable. See Fed. R. App. P. 4(a)(1)(60 days to appeal in case in which the U.S. Government agency is a party); *Latham v. Wells Fargo Bank*, 987 F.2d 1199, 1204 (5th Cir. 1993)(Any Rule 60(b) motion raising substantially similar grounds as urged or as could have been urged in an earlier motion is successive, and any appeal from the denial of such motion is not reviewable.).

Counsel for Flores is doing no more than reurging the same issue he lost initially, on the first set of postjudgment motions, and on the first appeal. This appeal is without arguable merit and thus frivolous. *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Counsel is hereby warned that pursuing frivolous appeals invites sanctions. See *United States v. Burlison*, 22 F.3d 93, 95 (5th Cir.), cert. denied, 115 S. Ct. 283 (1994).

DISMISSED. 5th Cir. R. 42.2; SANCTIONS WARNING ISSUED.