

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-11486  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VINCENT AUBYN DELHALL, also  
known as Sawyer,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:92-CR-365-D  
- - - - -

November 17, 1997

Before WIENER, BARKSDALE and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Vincent Aubyn Delhall, federal prisoner # 26013-083, appeals the district court's denial of his motion for leave to file an out-of-time appeal. Delhall did not file a notice of appeal within the 60-day period established in Fed. R. App. P. 4(a) for cases in which the United States is a party. Delhall did not file his motion for leave to file an out-of-time appeal within 30 days after the expiration of the applicable 60-day appeals period as required by Fed. R. App. P. 4(a)(5). He did not file his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion for leave to file an out-of-time appeal either within seven days after receiving notice of the entry of the district court's order or within 180 days of the entry of the district court's judgment as required by Fed. R. App. P. 4(a)(6).

Therefore, the district court did not abuse its discretion in denying Delhall's motion for leave to file an out-of-time appeal.

See Latham v. Wells Fargo Bank, N.A., 987 F.2d 1199, 1201 (5th Cir. 1993); In re Jones, 970 F.2d 36, 39 (5th Cir. 1992).

Because Delhall did not file a timely notice of appeal and because the district court did not abuse its discretion in denying his motion for leave to file an out-of-time appeal, we lack jurisdiction to review the district court's denial of Delhall's 18 U.S.C. § 3582(c)(2) motion for reduction of his sentence. Accordingly, Delhall's appeal is DISMISSED for lack of jurisdiction. Delhall's motion for leave to proceed *in forma pauperis* on appeal is DENIED as moot.

APPEAL DISMISSED; IFP MOTION DENIED AS MOOT.