

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40646
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK CURTIS RICHARDSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(1:94-CR-97-1)

April 30, 1997

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Richardson's court-appointed counsel has filed a motion to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Richardson has responded. But, we must first address, *sua sponte*, our jurisdiction *vel non*.

Final judgment was entered on 21 February 1996; but, the notice of appeal was not filed until 3 July 1996. The notice of appeal filing and the district court's finding of excusable neglect

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

for filing the late notice were outside the excusable-neglect period (40 days after entry of final judgment) of FED. R. APP.P.4(b). The district court was without authority to make such a finding outside this period. *United States v. Awalt*, 728 F.2d 704, 705 (5th Cir. 1984). The appeal is, therefore, **DISMISSED** for lack of appellate jurisdiction. *United States v. Merrifield*, 764 F.2d 436, 437 (5th Cir. 1985).