

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-40924  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUSTAVO ANDRADE,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-91-CR-236-1  
- - - - -

June 17, 1997

Before SMITH, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:\*

Gustavo Andrade, #57391-079, has appealed the denial of his "Motion to Reduce Sentence and to Correct an Illegal Sentence Pursuant to Federal Rule of Criminal Procedure Rule 35(a)(1)." The notice of appeal was not filed within ten days of entry of judgment. See Fed. R. App. P. 4(b). It would be futile for this court to remand to the district court to determine whether there was excusable neglect in filing the late notice of appeal, see

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

United States v. Golding, 739 F.2d 183, 184 (5th Cir. 1984), because even if there is excusable neglect and the appeal is timely, we would dismiss the appeal as frivolous. The district court had no jurisdiction to entertain the Rule 35 motion.

United States v. Early, 27 F.3d 140, 141-142 (5th Cir.), cert. denied, 115 S. Ct. 600 (1994).

DISMISSED.