

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 99-10770  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO ESCOBEDO, JR.,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:97-CV-927-P  
-----

February 16, 2000

Before EMILIO M. GARZA, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Mario Escobedo, Jr., federal prisoner # 26450-077, requests that this court grant him a certificate of appealability (COA) to appeal the district court's denial of his motion to vacate his sentence under 28 U.S.C. § 2255. Although Escobedo did not file a timely notice of appeal, the district court granted his request to reopen the time for filing a notice of appeal under FED.

R. APP. P. 4(a)(6).

This court must determine the basis of its jurisdiction, on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 1987). Rule 4(a)(6) permits the district court to reopen the time to file a notice of appeal if (A) the motion is filed within 180 days after the judgment is entered or within 7 days after the moving party receives notice of the entry, *whichever is earlier*; (B) the court finds that the moving party was entitled to notice of entry but did not receive the notice; and (C) the court finds no party would be prejudiced. Escobedo's motion, although it was filed within 7 days of his learning of the entry of judgment, was filed more than 180 days after judgment was entered. He therefore failed to fulfil the requirement of Rule 4(a)(6)(A), and the district court erred in reopening the time to file an appeal. We consequently DISMISS the appeal for lack of jurisdiction. See FED. R. APP. P. 3(a)(1). Escobedo's motion for COA from the denial of his § 2255 motion is DENIED as moot.

APPEAL DISMISSED; COA DENIED AS MOOT.