

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 99-20281
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO JAY POSADA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(H-91-CR-0027-3)

December 9, 1999

Before POLITZ, HIGGINBOTHAM, and WIENER, Circuit Judges.

PER CURIAM:*

Francisco Jay Posada appeals the denial of his third motion for reconsideration of his motion for modification of his sentence under 18 U.S.C. § 3582(c)(2). The sentence was imposed following his conviction for aiding and abetting the distribution of over five kilograms of cocaine. Posada did not file a timely notice of appeal of the denial of his motion.¹ It would be futile to remand this case to the district court for a determination whether there was excusable

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

¹ Fed.R.App.P. 4(b).

neglect in Posada's filing the late notice of appeal² because even if there is excusable neglect, and the notice of appeal from the order denying Posada's third motion for reconsideration is deemed timely, we would be compelled to dismiss this matter. The district court did not have jurisdiction to entertain Posada's motion for reconsideration because the motion itself was untimely filed.³ The district court appropriately should have denied Posada's motion for lack of jurisdiction.

As the district court lacked jurisdiction to consider Posada's motion for reconsideration in the first instance, this appeal from the district court's denial of that motion must be dismissed as frivolous.⁴ We caution Posada that any additional frivolous appeals filed by him or on his behalf will invite the imposition of the full panoply of sanctions. Posada should review any pending appeals to ensure that they do not raise arguments that are patently frivolous.

Appeal DISMISSED.

² **United States v. Golding**, 739 F.2d 183 (5th Cir. 1984).

³ **United States v. Cook**, 670 F.2d 46 (5th Cir. 1982).

⁴ **United States v. McEwen**, No. 99-30157 (5th Cir. Oct. 18, 1999) (unpublished); see also **Howard v. King**, 707 F.2d 215 (5th Cir. 1983).