

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20848

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JULIO ANTONIO ALVAREZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC Nos. H-99-CV-1794 &
H-94-CR-281-1
- - - - -

May 4, 2000

Before REAVLEY, DAVIS, and STEWART, Circuit Judges.

PER CURIAM:*

Julio Antonio Alvarez, federal prisoner # 66514-079, moves this court for a certificate of appealability (COA), following the district court's summary dismissal of his motion to vacate his sentence brought pursuant to 28 U.S.C. § 2255. Because Alvarez's notice of appeal was untimely, however, the only issue before the court is whether the district court abused its discretion by denying Alvarez's request to file a late notice of appeal. See United States v. Clark, 51 F.3d 42, 43 n.5 (5th Cir. 1995)(setting forth the standard for review of excusable-neglect

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

finding). Even though Alvarez was specifically instructed to brief this issue in his COA brief, he has failed to do so, focusing instead solely on the merits of his collateral challenges to his conviction. Because Alvarez has not briefed the issue, it is deemed waived. See Hughes v. Johnson, 191 F.3d 607, 613 (5th Cir. 1999) (claims not briefed in COA application are deemed waived), cert. denied, 120 S. Ct. 1003 (2000). Alvarez fails to show that the district court erred by denying his request to file a late notice of appeal, and the appeal therefore is DISMISSED for lack of jurisdiction.

APPEAL DISMISSED.