

July 29, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-21205
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILSON CALLE, also known as
Jose Ricardo Aguirre-Arias,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-94-CR-194-6

Before JOLLY, HIGGINBOTHAM, and PICKERING, Circuit Judges.

PER CURIAM:*

Wilson Calle, federal prisoner # 66452-079, attempts to appeal the district court's ruling of December 28, 2000, denying in part Calle's 28 U.S.C. § 2255 motion and granting partial relief in the form of a reduced supervised-release term. The Government has moved to dismiss the appeal for lack of jurisdiction because the notice of appeal, filed in December 2003, was untimely. Calle has responded, asserting that he should be allowed to proceed on appeal because at the time of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

judgment, his appointed counsel mistakenly sought a certificate of appealability rather than a direct appeal; that his petition for permission to appeal should have been construed as a new 28 U.S.C. § 2255 motion challenging the effectiveness of counsel at the resentencing; and that he is actually appealing the district court's denial of his motion to clarify the December 2000 ruling.

Because Calle's notice of appeal is untimely as to the December 2000 order, this court lacks jurisdiction over this appeal. See Dison v. Whitley, 20 F.3d 185, 186 (5th Cir. 1994); FED. R. APP. P. 4(a)(1)(B). Even if Calle could appeal the denial of his motion to clarify, he did not do so because he specified in his notice of appeal that he wished to challenge the December 2000 order. See FED. R. APP. P. 3(c)(1)(B). Consequently, the APPEAL IS DISMISSED. Calle's motions for appointment of counsel, for leave to proceed *in forma pauperis* on appeal, for recusal of the district court judge, and for remand to a different district court judge are DENIED.

APPEAL DISMISSED; ADDITIONAL MOTIONS DENIED.