

December 12, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40436
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO CASTILLO-LAGUNAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-394-ALL

Before JONES, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Pedro Castillo-Lagunas pleaded guilty to a one-count indictment charging him with being found in the United States on July 6, 2004, following deportation. The district court granted a downward departure and sentenced Castillo-Lagunas to 46 months in prison and a three-year term of supervised release. Castillo-Lagunas did not timely file a notice of appeal.

On December 29, 2004, the district court received a undated letter from Castillo-Lagunas asking to appeal his sentence. 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

district court construed Castillo-Lagunas's letter as a motion under FED R. APP. P. 4(b)(4) for an extension of time to file a notice of appeal and denied the motion.

Castillo-Lagunas contends that the district court erred in determining that he had not shown good cause for the untimely filing of the notice of appeal. The district court's finding on excusable neglect is reviewed for an abuse of discretion. United States v. Clark, 51 F.3d 42, 43 n.5 (5th Cir. 1995). Castillo-Lagunas has shown no prejudice. Castillo-Lagunas has given no reason for the delay in filing a notice of appeal. Castillo-Lagunas's assertions in his motion for extension are in direct contradiction to his statements in open court and indicate that he was not acting in good faith in seeking to appeal his sentence. The district court did not abuse its discretion in determining that Castillo-Lagunas had not shown excusable neglect for the untimely filing of the notice of appeal. See Clark, 51 F.3d at 43-44.

APPEAL DISMISSED.