

# United States Court of Appeals for the Fifth Circuit

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No. 23-10537  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 19, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

SERGIO FUENTES,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:21-CV-1328

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Before STEWART, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:\*

Sergio Fuentes, federal prisoner # 52153-177, moves for a certificate of appealability (COA) to appeal the denial of his Federal Rule of Civil Procedure 60(b) motion challenging the prior denial of his Federal Rule of Appellate Procedure 4(a)(5)(A) motion for leave to file an out-of-time appeal in his 28 U.S.C. § 2255 proceedings. Because the purpose of Fuentes's Rule

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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60(b) motion was to reinstate appellate jurisdiction over the original denial of his § 2255 motion, no COA is necessary. *See Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007); *Dunn v. Cockrell*, 302 F.3d 491, 492 (5th Cir. 2002).

Although Fuentes contends that he has shown excusable neglect or good cause, he does not address, and has therefore abandoned any challenge to, the district court's determination that his motion for leave to file an out-of-time appeal was not timely filed under Rule 4(a)(5)(A)(i). *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993) (holding that pro se appellant must brief arguments to preserve them); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) (observing that failure to identify any error in district court's analysis is same as if appellant had not appealed). Fuentes thus makes no nonfrivolous argument that the district court abused its discretion by denying his Rule 60(b) motion. *See Dunn*, 302 F.3d at 492; *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

The motion for a COA is DENIED as unnecessary, the motion for leave to proceed in forma pauperis is DENIED, and the appeal is DISMISSED as frivolous. *See Ochoa Canales*, 507 F.3d at 888 (5th Cir. 2007); *Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.