

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 29, 2024

Lyle W. Cayce
Clerk

No. 24-40024

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUIS MASCARENAS-JARAMILLO,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:18-CR-1422-4

Before SMITH, SOUTHWICK, and WILSON, *Circuit Judges*.

PER CURIAM:*

Nelson Ebaugh, counsel appointed to represent Luis Mascarenas-Jaramillo in his criminal case, has filed a motion to withdraw. Counsel maintains that he has a conflict of interest based on Mascarenas-Jaramillo's *pro se* 28 U.S.C. § 2255 motion, in which Mascarenas-Jaramillo contends that Ebaugh rendered ineffective assistance of counsel on appeal. Mascarenas-Jaramillo, in response, has moved to proceed *pro se* on appeal.

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

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We must examine our jurisdiction *sua sponte*. See *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). We have jurisdiction over final orders and “a small set of prejudgment orders that are collateral to the merits of an action and too important to be denied immediate review.” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 103 (2009) (internal quotation marks and citation omitted).

Although Mascarenas-Jaramillo’s notice of appeal references his judgment and sentence, he has already appealed both the original judgment and the amended judgment in his criminal case. He is not entitled to a second appeal of either. See *United States v. Arlt*, 567 F.2d 1295, 1297 (5th Cir. 1978); accord *United States v. Rodriguez*, 821 F.3d 632, 633-34 (5th Cir. 2016). In light of this, and given that the notice of appeal was dated 11 days after the issuance of the magistrate judge’s report and recommendation, we treat the notice of appeal as evincing Mascarenas-Jaramillo’s desire to appeal the decision in his 28 U.S.C. § 2255 proceedings. But no final judgment has been entered in that matter. The report and recommendation is not a final decision from which an appeal can be taken. See *United States v. Cooper*, 135 F.3d 960, 963 (5th Cir. 1998).

Because there is no final judgment and no immediately appealable order, we lack jurisdiction over this appeal. See *id.* Accordingly, it is DISMISSED for want of jurisdiction, and counsel’s motion to withdraw and Mascarenas-Jaramillo’s motion to proceed *pro se* are DENIED as moot.