

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

June 29, 2021

Lyle W. Cayce  
Clerk

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No. 20-11195  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

FABIAN C. FLEIFEL,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:12-CR-318-3

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Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:\*

Fabian C. Fleifel, federal prisoner # 57575-018, has appealed the district court's order denying his untimely motion for reconsideration of its order denying his motion for compassionate release. The Government contends that the district court lacked jurisdiction, and it has moved to

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

dismiss the appeal. The Government is correct that the district court lacked jurisdiction over Fleifel's reconsideration motion given that he had appealed the underlying order denying compassionate release months before moving for reconsideration. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). However, in similar circumstances we have not dismissed the appeal but instead have affirmed on alternative jurisdictional grounds. *See, e.g., United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). Accordingly, we DENY the motion to dismiss the appeal, DISPENSE with further briefing, and AFFIRM the district court's denial of reconsideration.

The Government's motion for an extension of time to file its brief is DENIED. Fleifel's motions to consolidate this appeal with his appeal from the district court's original order, in case number 20-10681, and for appointment of counsel are also DENIED.