

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-50775

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2018

UNITED STATES OF AMERICA,

Plaintiff-Appellee

Lyle W. Cayce
Clerk

v.

ROBERT BAHENA, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:16-CR-21-1

Before JONES, ELROD, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Robert Bahena, Jr., federal prisoner # 84965-280, appeals the denial of his 18 U.S.C. § 3582(c) motion for reduction of sentence after his conviction and 262-month sentence for possession with intent to distribute methamphetamine. After filing a notice of appeal, Bahena filed a motion to dismiss the appeal without prejudice, asserting that he wished to pursue relief under 28 U.S.C. § 2255 rather than the instant appeal.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Bahena filed his notice of appeal after the expiration of the time for filing a timely appeal, and on remand, the district court determined that he had not shown good cause or excusable neglect entitling him to an extension to file an appeal. *See* FED. R. APP. P. 4(b)(1)(A)(i), (b)(4); *United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000). Accordingly, his appeal is DISMISSED as untimely. Bahena's motion for dismissal of his appeal without prejudice is DENIED. *See* FED. R. APP. P. 42(b); 5TH CIR. R. 42.1 & 42.4.