

United States Court of Appeals
Fifth Circuit

FILED

January 9, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40880
USDC No. 5:03-CR-185-0-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISRAEL SAENZ, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

In this case filed pursuant to 28 U.S.C. § 2255, the district court entered a final judgment dismissing the action on April 5, 2006. On April 20, 2006, the petitioner filed a pro se notice of appeal from the final judgment. In his request for a certificate of appealability, the petitioner noted that the district court failed to address one of the issues in his motion. On May 15, 2006, the district court entered an order vacating its earlier final judgment dismissing the case and restoring the case

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

on the docket.

The district court was divested of jurisdiction by the filing of a timely notice of appeal. See Alvestad v. Monsanto Co., 671 F.2d 908, 911 n.2 (5th Cir.), cert. denied, 459 U.S. 1070 (1982). This court has received a request from the district court to remand the case so that it can address the remaining issue in the § 2255 motion. We remand the case to the district court to re-enter its judgment and conduct such further proceedings as may be necessary. See Willie v. Continental Oil Co., 746 F.2d 1041, 1046 (5th Cir. 1984), vacated by grant of rehearing en banc, 760 F.2d 87 (5th Cir. 1985), on rehearing, 784 F.2d 706 (5th Cir. 1986) (en banc). See also Travelers Inc. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1407 n.3 (5th Cir. 1994) (citing panel opinion in Willie). We do not retain jurisdiction.

REMANDED.