

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

United States Court of Appeals
Fifth Circuit

FILED

December 8, 2010

Lyle W. Cayce
Clerk

No. 08-11096
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL LEWIS, also known as MD,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CR-70-1

Before KING, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Michael Lewis, federal prisoner # 35452-177, is serving a 240-month term of imprisonment for distributing cocaine base. Lewis filed a motion for a reduction of his sentence under 18 U.S.C. § 3582(c)(2) based on the United States Sentencing Commission's retroactive amendments to the base offense levels for crack cocaine offenses. He appeals the district court's denial of that motion and of his motion for reconsideration of the decision.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 08-11096

Lewis did not file a notice of appeal within ten days after the district court denied his § 3582(c)(2) motion or within ten days after the district court denied his motion for reconsideration. *See* FED. R. APP. P. 4(b)(1)(A)(i) (2008); FED. R. APP. P. 26(a)(2) (2008); *United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000) (noting that a § 3582(c)(2) motion is a step in a criminal case). Lewis did request an extension of time to file his notice of appeal. However, the district court denied the motion because it was filed beyond the 10-day period for filing a notice of appeal and beyond the 30-day period in which Lewis could have obtained such an extension. More than four months after the district court denied his motion for reconsideration, Lewis filed an untimely notice of appeal in this court.

Although Rule 4(b) is not jurisdictional, a defendant is not entitled to have his untimeliness disregarded. *United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Accordingly, Lewis's appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2.

APPEAL DISMISSED.