

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 16, 2009

No. 09-50087
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE RAMIREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:05-CR-660-1

Before GARZA, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Jose Ramirez pleaded guilty, pursuant to a written plea agreement, to possession with intent to distribute cocaine and was sentenced to a 46-month term of imprisonment and a three-year term of supervised release. *See* 21 U.S.C. § 841(a)(1), (b)(1)(B). The district court's judgment of conviction and sentence was entered on June 25, 2007. On January 27, 2009, Ramirez, pro se, filed a motion for leave to file an untimely notice of appeal and an accompanying notice of appeal. The district court denied Ramirez's motion to file an untimely

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

notice of appeal and denied Ramirez leave to proceed in forma pauperis (IFP) on appeal because his appeal failed to present a “good faith” non-frivolous issue for appeal as required by 28 U.S.C. § 1915(a)(3). Ramirez now seeks leave from this court to proceed IFP on appeal. We construe Ramirez’s motion for leave to proceed IFP as a challenge to the district court’s certification that his appeal was not in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997) (civil case); *United States v. Boutwell*, 896 F.2d 884, 889-90 (5th Cir. 1990) (one-judge order) (criminal case). Ramirez’s motion to file his brief in present form is GRANTED.

Ramirez did not file a notice of appeal within ten days of the entry of the judgment of conviction and sentence. *See* FED. R. APP. P. 4(b)(1)(A)(i). Although FED. R. APP. P. 4(b)(4) provides for an extension of time upon a showing of excusable neglect, Ramirez’s motion to file an untimely notice of appeal was filed well beyond even this extended appeal period. Thus, the district court did not err in enforcing the time limitations set forth in Rule 4(b), and this court may not reverse its decision to do so. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Because the instant appeal is without arguable merit, Ramirez’s motion to proceed IFP is DENIED and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.

MOTION TO FILE BRIEF IN PRESENT FORM GRANTED; MOTION FOR IFP DENIED; APPEAL DISMISSED.