

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

United States Court of Appeals
Fifth Circuit

FILED

December 17, 2009

No. 09-50588
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RICARDO TREVINO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:07-CR-281-1

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Ricardo Trevino pleaded guilty pursuant to a written plea agreement to conspiracy to possess with the intent to distribute marijuana and was sentenced to 87 months of imprisonment and four years of supervised release. The district court's judgment was entered on May 4, 2009. On June 18, 2009, Trevino filed a letter indicating his desire to appeal. He also sought the appointment of new counsel. The district court treated Trevino's letter as a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

request for an out-of-time appeal and denied it because it was not filed within 30 days of the expiration of the appeal period as required by Federal Rule of Appellate Procedure 4(b)(4). The district court also denied Trevino's request for appointment of counsel.

Trevino has filed a motion with this court to have his counsel removed and new counsel appointed. We may dismiss an appeal during consideration of an interlocutory motion if the appeal "is frivolous and entirely without merit." 5TH CIR. R. 42.2. Trevino did not file a notice of appeal within 10 days after the entry of the criminal judgment, *see* FED. R. APP. P. 4(b)(1)(A), or even within the time for extending the appeal period under FED. R. APP. P. 4(b)(4). Trevino is not entitled to have the untimeliness of his notice of appeal disregarded. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). Trevino's motions to have counsel removed and new counsel appointed are denied, and his delinquent appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2.

MOTIONS DENIED; APPEAL DISMISSED.