

January 6, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41547
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAYMOND ALPHONSO DALEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:03-CV-163
USDC No. 2:01-CR-17-1

Before HIGGINBOTHAM, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Raymond Alphonso Daley, a federal prisoner (# 89980-079), moves for a certificate of appealability ("COA") to appeal the district court's denial of his 28 U.S.C. § 2255 motion to vacate his sentence. Following a remand by this court pursuant to Thompson v. Montgomery, 853 F.2d 287 (5th Cir. 1988), the district court determined that Daley had failed to establish that he had filed a timely notice of appeal. The clerk's office has directed Daley to brief this jurisdictional issue, but he has failed to do so. Daley has effectively abandoned any challenge

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

O R D E R
No. 03-41547
- 2 -

to the district court's determination that his notice of appeal was untimely, see Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987), and this court is without appellate jurisdiction. See Dison v. Whitley, 20 F.3d 185, 186 (5th Cir. 1994). Accordingly, the appeal is DISMISSED. Daley's COA application is DENIED as moot.

APPEAL DISMISSED; COA DENIED AS MOOT.