

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50294
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESSE R. RIVERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-98-CR-238-1-SS

October 19, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

The district court found that the untimely notice of appeal filed by Jesse R. Rivera was not due to excusable neglect. Rivera's counsel filed a motion to withdraw and a brief in accordance with Anders v. California, 386 U.S. 738, 744 (1967). After twice being directed to do so by this court, counsel filed a brief addressing whether the district court's finding of no excusable neglect was an abuse of discretion. We have reviewed such brief and find no abuse of discretion. See United States v. Clark, 51 F.3d 42, 43-44 & n.5 (5th Cir. 1995). Accordingly, the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appeal is DISMISSED for lack of jurisdiction. See United States v. Merrifield, 764 F.2d 436, 437 (5th Cir. 1985). The motion to withdraw is DENIED as moot.

APPEAL DISMISSED; MOTION DENIED.