

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50681
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL ANTHONY CASTRO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
(93-CR-20-1)
- - - - -

May 19, 1999

Before JOLLY, WIENER and BARKSDALE, Circuit Judges.

PER CURIAM:*

The district court did not abuse its discretion in determining that Michael Anthony Castro's untimely filing of his notice of appeal was not due to excusable neglect. United States v. Clark, 51 F.3d 42, 44 (5th Cir. 1995). Without a finding of excusable neglect, Castro's notice of appeal filed on August 15, 1997, is untimely, and this court is without jurisdiction over the appeal. Fed. R. App. P. 3(a)(1). Accordingly, the appeal is DISMISSED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Castro also seeks leave to proceed in forma pauperis (IFP) in the appeal of the denial of his purported "Rule 60(b)" motion. Because Castro fails to show that he will raise a nonfrivolous issue on appeal, his motion to proceed IFP is denied, and the appeal relating to the notice of appeal filed on November 24, 1998, is dismissed. See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982); 5th Cir. R. 42.2.