

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-20336  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROMEL WILLIAM TORRES, also known as Cari,  
also known as Carino, also known as Larry,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-97-1408  
- - - - -

April 14, 1999

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Romel William Torres appeals the district court's denial of his motion to file an out-of-time notice of appeal from the denial of his § 2255 motion and moves this court for a certificate of appealability (COA) to appeal the denial of his § 2255 motion. Torres does not require a COA to appeal the district court's denial his motion to file an out-of-time appeal. See 28 U.S.C. § 2253(c)(1)(B).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Finding no abuse of discretion, we AFFIRM the district court's denial of Torres' motion to file an appeal out-of-time. See Halicki v. Louisiana Casino Cruises, Inc., 151 F.3d 465, 468 (5th Cir. 1998). Torres' motion for COA from the denial of his § 2255 motion is DENIED as moot.

AFFIRMED; DENY COA AS MOOT.