

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 23, 2015

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL TORRES-SANCHEZ,

Defendant - Appellant.

No. 15-2003
(D.C. No. 2:11-CR-01854-RB-1)
(D. N.M.)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE DIAZ-LOPEZ,

Defendant - Appellant.

No. 15-2004
(D.C. No. 2:14-CR-01657-RB-1)
(D. N.M.)

ORDER

Before **BRISCOE**, Chief Judge, **TYMKOVICH**, and **HOLMES**, Circuit Judges.

These two criminal appeals filed pro se by defendant Miguel Torres-Sanchez, also known as Jorge Diaz-Lopez, are before us on motions to dismiss by the government. In Appeal No. 15-2004, Mr. Torres-Sanchez appeals his 2014 conviction for illegal reentry of a removed alien in D.N.M. No. 14-CR-1657. This conviction resulted in the

revocation of unsupervised release imposed in a prior criminal case, D.N.M. No. 11-CR-1854. The revocation of release is the subject of Appeal No. 15-2003.

The government moves to dismiss both appeals as untimely. In No. 15-2004, the government also moves in the alternative to enforce the appeal waiver contained in Mr. Torres-Sanchez's 2014 plea agreement. Mr. Torres-Sanchez's court-appointed attorney has filed responses to the government's motions to dismiss styled as *Anders* briefs. He concedes that the appeals are untimely, and that Mr. Torres-Sanchez (Diaz-Lopez) waived his right to appeal in his 2014 plea agreement. Counsel has also moved to withdraw in both appeals. *See Anders v. California*, 386 U.S. 738 (1967) (allowing defendant's counsel to seek permission to withdraw if counsel finds the appeal wholly frivolous).

In a criminal case, the notice of appeal must be filed in the district court within 14 days after entry of the judgment. Fed. R. App. P. 4(b)(1). The timely filing of a notice of appeal by the defendant is an inflexible claim-processing rule that may be forfeited if not properly raised by the government. *United States v. Garduño*, 506 F.3d 1287, 1290-91 (10th Cir. 2007). If properly raised, however, we must grant relief. *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir 2008) (citing *Garduño*, 506 F.3d at 1290-91).

In the instant case, the district court entered judgment against Mr. Torres-Sanchez in No. 14-CR-1657 on September 29, 2014. The district court entered judgment against Mr. Torres-Sanchez in No. 11-CR-1854 on the same day. Mr. Torres-Sanchez filed his notice of appeal for both cases on December 31, 2014, well beyond the deadline for filing an appeal. Because the government has properly invoked the time bar in Rule 4(b), and

we agree that the notice of appeal was untimely, we grant the government's request to dismiss both appeals on timeliness grounds. No additional responses are required for us to reach this conclusion.

The government's alternative request to enforce the appeal waiver in No. 15-2004 is denied as moot. Defense counsel's motion to withdraw is granted in both appeals.

Appeals dismissed.

A copy of this order shall stand as and for the mandate of the court.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk