

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14-41356

United States Court of Appeals
Fifth Circuit

FILED

July 14, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JAVIER GONZALEZ-GONZALEZ,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:13-CR-1491-1

Before HIGGINBOTHAM, SMITH, and OWEN, Circuit Judges.

PER CURIAM:*

Javier Gonzalez-Gonzalez was convicted of being found in the United States following deportation. The judgment was entered on February 19, 2014.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 14-41356

No earlier than November 9, 2014, Gonzalez-Gonzalez filed a *pro se* notice of appeal and moved for leave to proceed in forma pauperis (“IFP”).

The district court denied leave to proceed IFP, observing that the notice of appeal was untimely and that the time to seek an extension of the appeal period had expired on April 4, 2014. Gonzalez-Gonzalez’s appointed counsel has moved for leave to withdraw, and Gonzalez-Gonzalez has responded.

The time limit to appeal in a criminal case is not jurisdictional and may be waived. *United States v. Martinez*, 496 F.3d 387, 388–89 (5th Cir. 2007). Nevertheless, a defendant is not entitled to have his untimeliness disregarded. *United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). After reviewing the record, counsel’s motion, and Gonzalez-Gonzalez’s response, we conclude that the appeal is frivolous.

The motion to withdraw is GRANTED, and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2. Gonzalez-Gonzalez’s motion to remand is DENIED.