

United States Court of Appeals
for the Fifth Circuit

No. 22-51049

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BALENTIN MARTINEZ QUINONES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:99-CR-13-7

Before ELROD, GRAVES, and HO, *Circuit Judges*.

PER CURIAM:*

Balentin Martinez Quinones, federal prisoner # 33632-077, moves to withdraw his appeal from the district court's denial of his motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). Although he nominally requests to withdraw his appeal without prejudice, Quinones has not requested a stay, and, therefore, he is not entitled to such a dismissal. *See* 5TH CIR. R. 42.4. Quinones has expressed his intent to file a

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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§ 3582(c)(1)(A)(i) motion in the district court instead, and he now has filed that motion. Thus, we construe the instant motion as requesting the voluntary dismissal of the appeal with prejudice.

IT IS ORDERED that the motion, as construed, is GRANTED. *See* FED. R. APP. P. 42(b); 5TH CIR. R. 42.1. The appeal is DISMISSED.