

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 5, 2017

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SALVADOR TORRES-GARCIA,

Defendant - Appellant.

No. 16-4213
(D.C. No. 2:07-CR-00060-TS-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **BALDOCK**, and **MURPHY**, Circuit Judges.

Salvador Torres-Garcia is serving a 151-month sentence after pleading guilty to possessing, with intent to distribute, over 500 grams of cocaine. After the Sentencing Commission promulgated Amendment 782 to the Guidelines, Mr. Torres-Garcia filed a motion to reduce his sentence under 18 U.S.C. § 3582(c)(2). The district court denied that motion in August 2015. In September 2016, more

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

than a year after that denial, Mr. Torres-Garcia moved for reconsideration. The district court denied the motion to reconsider on October 13, 2016. Mr. Torres-Garcia then waited until December 7, 2016 to file an “Application for Certificate of Appealability,” which this court construed as a notice of appeal filed on December 12. The government now asks us to dismiss the appeal as untimely. The law compels us to agree.

Federal Rule of Appellate Procedure 4(b)(1) requires a criminal defendant to file a notice of appeal in the district court within 14 days of the entry of the judgment or order being appealed. Although that time bar is not jurisdictional, it “must be enforced by this court when properly invoked by the government.”

United States v. Mitchell, 518 F.3d 740, 744 (10th Cir. 2008). Here, the government has properly invoked the time bar in its response brief. *See United States v. Garduno*, 506 F.3d 1287, 1292 & n.7 (10th Cir. 2007). Mr. Torres-Garcia did not submit his application for a certificate of appealability until over 50 days after the district court denied his motion to reconsider and over a year after the denial of his original § 3582 motion. Accordingly, that application cannot serve as a timely notice of appeal of either decision.

We DISMISS this appeal as untimely. We also DENY the motion to proceed in forma pauperis because we cannot discern a reasoned, non-frivolous argument on the law and facts in support of the issues Mr. Torres-Garcia raised in

his briefs. We remind him of his obligation to pay the filing fee in full.

ENTERED FOR THE COURT

Timothy M. Tymkovich
Chief Judge