

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

EMETERIO VELAZQUEZ,

Defendant.

ORDER

12-cr-62-bbc

Defendant Emeterio Velezquez pleaded guilty to one count of conspiracy to possess with intent to distribute 5 kilograms or more of cocaine in violation of 21 U.S.C. § 841(a)(1) and was sentenced on September 25, 2013 to a term of imprisonment of 240 months. He did not appeal his conviction.

On March 30, 2014, defendant filed a notice of appeal and motion for extension of time to file his direct appeal, claiming that his lawyer failed to file a timely appeal on his behalf. Because both his notice of appeal and motion for an extension of time to file an appeal were untimely under Fed. R. App. P. 4(b)(4), I denied his motion. At that time I did not make a determination on defendant's eligibility to proceed on appeal in forma pauperis. Because defendant had retained counsel during the criminal proceedings against him, he is not automatically eligible for in forma pauperis status.

Now defendant has filed a motion and affidavit to proceed on appeal in forma

pauperis. From my review of defendant's financial affidavit, I am satisfied that he is financially unable to pay the costs of his appeal. I conclude also that defendant is financially eligible for the appointment of counsel should the court of appeals determine that his appeal is timely. It is not within this court's authority to determine the timeliness of an appeal; that decision is for the court of appeals to make.

Entered this 10th day of April, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge