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Citation: **2005 U.S. Dist. LEXIS 1392**

*2005 U.S. Dist. LEXIS 1392, **

UNITED STATES OF AMERICA -against- ANGEL OLIVARES

02 Cr. 1331-05(SHS)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2005 U.S. Dist. LEXIS 1392

February 1, 2005, Decided
February 1, 2005, Filed

DISPOSITION: [***1**] Olivares' motion for an extension of time to file a notice of appeal, pursuant to [Fed. R. App. P. 4\(b\)\(4\)](#), denied.

CORE TERMS: extension of time, notice of appeal, sentence, excusable neglect, entry of judgment, good cause, expiration

COUNSEL: For Angel Olivares also known as "Louie,", Defendant: Alexander Edward Eisemann, Eisemann Law Office, Katonah, NY; George George Goeltzer, O. Peter Sherwood, Corporation Counsel of the City of New York, New York, NY; George Robert Goltzer, George Robert Goltzer, New York, NY; Valerie Amsterdam, Amsterdam and Branden, New York, NY; Valerie S. Amsterdam, New York, NY.

For USA, Plaintiff: David Matthew Rody, U.S. Attorney's Office, SDNY (St Andw's), New York, NY; Timothy J. Treanor, Assistant United States Attorney, Mary Jo White, United States Attorney, New York, NY.

JUDGES: Sidney H. Stein, U.S.D.J.

OPINIONBY: Sidney H. Stein

OPINION: MEMORANDUM ORDER

SIDNEY H. STEIN, U.S. District Judge.

On September 27, 2004, this Court sentenced Angel Olivares, who had previously pled guilty to one count of conspiracy to distribute narcotics in violation of [21 U.S.C. § 846](#), principally to 120 months of incarceration, followed by five years of supervised release. Olivares was subject to the mandatory minimum sentence of ten years imprisonment required by [21 U.S.C. § 841\(b\)\(1\)\(A\)](#) [***2**].

Olivares wrote to the Court on January 20, 2005 seeking "permission to appeal" to the U.S. Court of Appeals for the Second Circuit in light of the U.S. Supreme Court's opinion in [United States v. Booker](#), [U.S. , 125 S. Ct. 738, L. Ed. 2d , 2005 WL 50108 \(2005\)](#). (Letter of Angel Olivares to the Court, dated January 20, 2005, at 2). The Court construes Olivares' letter as a motion for extension of time to file a notice of appeal, pursuant to [Fed. R. App. P. 4\(b\)\(4\)](#). Olivares' motion is denied, because it is procedurally and substantively deficient.

[Fed. R. App. P. 4\(b\)\(1\)\(A\)\(i\)](#) provides that a defendant must file a notice of appeal in the district court within ten days of the entry of judgment. Subsection (b)(4) permits district

courts to extend that period "upon a finding of excusable neglect or good cause[,]" but only "for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this [Rule 4\(b\)](#)." The judgment against Olivares was signed on September 28, 2004, entered on October 5, 2004 and docketed as a judgment on October 6, 2004. Olivares' letter dated January 20, 2005 was written **[*3]** approximately three and one-half months after the entry of judgment, well beyond the expiration of the 30-day extension period that this Court could have provided him had it found the appropriate circumstances existed.

Even if Olivares' application were timely, the application sets forth no colorable basis for the Court to find that there has been "good cause" or "excusable neglect," as required by [Fed. R. App. P. 4\(b\)\(4\)](#), for an extension of time to file an appeal. Olivares' only proffered argument is that the U.S. Supreme Court recently decided [Booker, 125 S. Ct. 738](#). In claiming that Booker should afford him relief from his sentence, Olivares erroneously conflates the U.S. Sentencing Guidelines, whose previously mandatory nature the U.S. Supreme Court held unconstitutional in Booker, with minimum sentences imposed by statute, on which Booker had no effect. The ten year minimum sentence required by [21 U.S.C. § 841\(b\)\(1\)\(A\)](#) is still valid; Booker did not alter that statutory requirement. Because Booker does not impact statutorily mandated minimum sentences, its recent promulgation is irrelevant to Olivares' request.

Olivares' **[*4]** motion for an extension of time to file a notice of appeal, pursuant to [Fed. R. App. P. 4\(b\)\(4\)](#), is denied.

Dated: New York, New York

February 1, 2005

SO ORDERED:

Sidney H. Stein, U.S.D.J.

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