

APPENDIX A

JUDGMENT OF DENIAL FROM NINTH CIRCUIT

COURT OF APPEALS ON THE WRIT OF

MANDAMUS

United States Court of Appeals

**FIFTH CIRCUIT
OFFICE OF THE CLERK**

**LYLE W. CAYCE
CLERK**

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 09, 2020

Ms. Jeannette Clack
Western District of Texas, El Paso
United States District Court
525 Magoffin Avenue
Room 108
El Paso, TX 79901-0000

No. 19-50518 In re: Marco Blancas
USDC No. 3:98-CR-1194-9

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Cloudia K. Farrington

By:

Claudia N. Farrington, Deputy Clerk
504-310-7706

cc w/encl:

Mr. Marco Antonio Blancas

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50518

In re: MARCO ANTONIO BLANCAS,

Petitioner.

Petition for a Writ of Mandamus to
the United States District Court
for the Western District of Texas

Before SMITH, DENNIS and DUNCAN, Circuit Judges.

PER CURIAM:

Marco Blancas, federal prisoner #11644-180, filed a *pro se* petition for writ of mandamus and a memorandum in support. Blancas was convicted and sentenced in 2002. He did not file an appeal. His 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence was dismissed with prejudice.

Blancas subsequently filed a motion for a reduction of sentence under Federal Rule of Criminal Procedure 35(b) and a motion to compel the government either to join in his Rule 35(b) motion or to file its own Rule 35(b) motion. In those motions, he complained that the government had breached its post-plea agreement to move for a reduction of his sentence. The district court denied both motions on March 27, 2018. On May 4, 2018, Blancas filed a

motion, stamped as received on May 7, 2018, asking the district court to reconsider its denial of his motion to compel. *See Houston v. Lack*, 487 U.S. 266, 270–72 (1988) (holding that pleadings filed by a *pro se* prisoner are deemed filed when presented to prison authorities for mailing). The court denied the motion on July 16, 2019. Blancas filed a second motion for reconsideration, which the court denied on August 23, 2019.

“Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases.” *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a “clear and indisputable” right to the writ. *Id.* (internal quotation marks and citation omitted). Mandamus is not a substitute for appeal. *Id.* “Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus.” *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

In his mandamus petition, Blancas complains of delay in the district court’s adjudication of his first motion for reconsideration. He asks us to compel the court to rule on that motion. In light of the July 16, 2019, order denying that motion, the request for mandamus relief is moot.

Blancas filed his memorandum in support of his petition for a writ of mandamus after the district court had denied his second motion for reconsideration. In his memorandum, Blancas reiterates his claim that the government breached his post-plea agreement; he asserts, in light of the alleged breach, that his guilty plea was not knowingly and voluntarily entered. Those complaints do not warrant mandamus relief. Blancas’s appropriate remedy was to raise those issues on direct appeal and, if necessary, in a § 2255 motion. He is not entitled to a writ of mandamus just because he failed to pursue his

appellate remedy and did not raise those claims in his § 2255 motion.

Finally, Blancas contends that the district court abused its discretion by denying his motion to compel and erred by denying his motions for reconsideration of that decision. Blancas can obtain or could have obtained review of those decisions by filing a timely appeal. He is not entitled to mandamus relief. *See Campanioni, 962 F.2d at 464.*

Although Blancas has not filed notices of appeal from the orders, a mandamus petition may be construed as a timely notice of appeal if it clearly evinces an intent to appeal and is filed within the time prescribed by Federal Rule of Appellate Procedure 4. *See Yates v. Mobile Cty. Pers. Bd., 658 F.2d 298, 299* (5th Cir. 1981); FED. R. CRIM. P. 4(a)(1)(B).¹ Blancas's memorandum in support of his petition expresses his intent to appeal the orders. Although the certificate of service is dated September 13, 2019, Blancas signed the document on September 19, 2019, and could not have submitted it to prison authorities for mailing before that date. FED. R. APP. P. 4(c)(1). It was date-stamped as received in this court on September 30, 2019.

The memorandum was not filed within 60 days from the March 27, 2018, order denying Blancas's motion to compel or the July 16, 2019, order denying his first motion for reconsideration. It was, however, filed within 60 days of the August 23, 2019, order denying Blancas's second motion for reconsideration. Although we offer no opinion on the merits of any such motion or appeal, we construe Blancas's memorandum as a notice of appeal from that decision. When a notice of appeal "is mistakenly filed in the court of appeals, the clerk

¹ Blancas's assertion that the government breached the post-plea agreement would fall within the ambit of a § 2255 motion. *See United States v. Hayes, 532 F.3d 349, 352* (5th Cir. 2008) (observing that a § 2255 proceeding is civil in nature). Because the United States is a party in this case, Blancas had 60 days to file a timely notice of appeal. *See FED. R. CRIM. P. 4(a)(1)(B)*.

of that court must indicate on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted." FED. R. APP. P. 4(d).

The petition for a writ of mandamus is DENIED. The Clerk is directed to transmit Blancas's memorandum in support of his petition for writ of mandamus to the district court to be filed as a notice of appeal from its denial of his second motion for reconsideration.

APPENDIX B
JUDGMENT AND COMMITMENT

1)

MONAGEN

APPENDIX B

JUDGMENT AND COMMITMENT

1)

MANAGEN .

UNITED STATES DISTRICT COURT
Western District of Texas

FILED

2002-AUG 14 AM 10:30

CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Case Number EP-98-CR-18194-DB (9)

DEPUTY

UNITED STATES OF AMERICA

4

MARCO ANTONIO BLANCAS
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MARCO ANTONIO BLANCAS, was represented by Joseph (Sib) Abraham and Kathleen Salome Smith.

On motion of the United States the Court has dismissed the indictment and the superseding indictment.

The defendant pled guilty to an information on August 9, 2002. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18 U.S.C. 1203	Hostage taking	December 1997	1

As pronounced on August 9, 2002, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100.00, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 14 day of August, 2002.

DAVID BRIONES
United States District Judge

A true copy of the original, I certify.
WILLIAM F. TUCKER
Clark, U. S. District Court.
Deputy

Aug 15 1969 20.

Defendant's Date of Birth: 2-21-65

65
140 OF PRISON
AUG 21 2002
CCM EL PASO, TX

Defendant: MARCO ANTONIO BLANCAS
Case Number: EP-98-CR-1194-DB (9)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of three hundred (300) months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be committed at F.C.I., Beaumont, Texas and that the defendant be allowed to participate in the Comprehensive Drug Treatment Program at the designated institution.

RETURN

I have executed this Judgment as follows:

Defendant delivered on 9/4/02 to FCC BMT
at Beaumont X, with a certified copy of this Judgment.
By R.D. Miles
United States Marshal
By W. Jell
Deputy Marshal

Defendant: MARCO ANTONIO BLANCAS
Case Number: EP-98-CR-1194-DB (9)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court (set forth below):

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If the judgment imposed a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with a schedule to be approved by the Court. In any case, the defendant shall cooperate with the Probation Officer in meeting any financial obligations.
- 4) In supervised release cases only, the defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- 5) If convicted of a felony, the defendant shall not possess a firearm as defined in 18 U.S.C. §921.
- 6) For offenses committed on or after September 13, 1994, the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment or placement on probation and at least two periodic drug tests thereafter, as directed by the Probation Officer.
The above drug testing condition may be suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.
- 7) The defendant shall not leave the judicial district without the permission of the Court or Probation Officer.
- 8) The defendant shall report to the Probation Officer and shall submit a truthful and complete written report within the first five days of each month.
- 9) The defendant shall answer truthfully all inquiries by the Probation Officer and follow the instructions of the Probation Officer.
- 10) The defendant shall support his or her dependents and meet other family responsibilities.
- 11) The defendant shall work regularly at a lawful occupation unless excused by the Probation Officer for schooling, training or other acceptable reasons.
- 12) The defendant shall notify the Probation Officer ten days prior to any change in residence or employment.
- 13) The defendant shall refrain from excessive use of alcohol.
- 14) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 15) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the Probation Officer.
- 16) The defendant shall permit a Probation Officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the Probation Officer.
- 17) The defendant shall notify the Probation Officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 18) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
- 19) As directed by the Probation Officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the Probation Officer to make such notifications and to confirm the defendant's compliance with such notification requirement.