

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 08-3393

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United States of America,

Appellee,

v.

Mario B. Valdez-Aldaba,

Appellant.

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Appeal from the United States  
District Court for the  
Western District of Missouri.

[UNPUBLISHED]

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Submitted: June 5, 2009  
Filed: July 23, 2009

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Before BYE, COLLOTON, and GRUENDER, Circuit Judges.

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PER CURIAM.

Mario Valdez-Aldaba appeals the district court's<sup>1</sup> dismissal of his post-judgment motion seeking to modify his sentence to grant him credit for time served on a state sentence. The district court dismissed the motion as untimely under Federal Rule of Criminal Procedure 35(a). Valdez-Aldaba's counsel has moved to withdraw.

Because Valdez-Aldaba's post-judgment motion was filed more than eighteen months after his sentencing, we conclude that the district court correctly denied it as

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<sup>1</sup>The Honorable Ortrie D. Smith, United States District Judge for the Western District of Missouri.

untimely, whether it is characterized as a motion to correct a sentence under Rule 35(a), or as a motion for relief from an illegal sentence under section 2255. See 28 U.S.C. § 2255(f)(1) (indicating motion for relief from sentence under § 2255 must be filed within 1 year from date on which judgment of conviction became final); Fed. R. Crim. P. 35(a) (providing for correction of sentence “[w]ithin 7 days after sentencing”).

Accordingly, we affirm and grant counsel’s motion to withdraw.

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