

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50382
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGELIO MURILLO-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-03-CR-2065-2-DB

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Rogelio Murillo-Garcia has moved for leave to withdraw from this appeal and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Murillo-Garcia has filed a response wherein he raises issues including an allegation of ineffective assistance of trial counsel.

Our independent review of the brief, the record, and Murillo-Garcia's response discloses no nonfrivolous issue for

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

appeal. We decline to address Murillo-Garcia's claim of ineffective assistance of counsel, without prejudice to Murillo-Garcia's right to assert such claims in a motion pursuant to 28 U.S.C. § 2255. See United States v. Brewster, 137 F.3d 853, 859 (5th Cir. 1998). Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. See 5TH CIR. R. 42.2.