

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40225
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-01-CR-275-4

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Court appointed counsel for Jose Rodriguez 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). Rodriguez has filed a response and asserts that his criminal history score was calculated erroneously because points were assigned to convictions that predate the instant offense by more than fifteen years. While convictions that occurred more than fifteen years

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

prior to the instant offense typically are not counted, those convictions are counted if the resultant incarceration extended into the fifteen year period preceding the instant offense. U.S.S.G. § 4A1.1, comment. (n.1). All convictions included in Rodriguez's criminal history score had periods of incarceration that extended into the fifteen year period prior to Rodriguez's commission of the instant offense and thus were properly counted.

Our independent review of the record discloses no nonfrivolous issue. 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.