

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-10925  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANSICO PENA, also known as Paco,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:00-CR-266-13-X  
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June 18, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Appointed counsel for Pena has moved to supplement the record with the transcript of arraignment. The motion to supplement is GRANTED.

Appointed counsel for Fransico Pena has also moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Pena received a copy of counsel's motion and brief and has filed a response. Among other

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

things, Pena alleges ineffective assistance of counsel at the plea and at sentencing. Pena did not waive appeal of ineffective assistance of counsel claims either on direct appeal or in a proceeding under 28 U.S.C § 2255. This issue cannot be decided on direct appeal because the record is inadequate for this court to evaluate the claims. United States v. Fry, 51 F.3d 543, 545 (5th Cir. 1995); United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987).

Our independent review of the brief, the remaining issues raised in Pena's response, and the record discloses no nonfrivolous issue. Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein. Pena's motion to dismiss counsel and for an extension of time are DENIED. See United States v. Wagner, 158 F.3d 901, 902 (5th Cir. 1998). The APPEAL IS DISMISSED. See 5TH CIR. R. 42.2.