

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20551
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO CANO-DELGADO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-62-1

June 19, 2002

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

PER CURIAM:*

The Federal Public Defender appointed to represent Antonio Cano-Delgado has moved to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967).

Cano-Delgado has received a copy of counsel's motion and brief and has filed a response, arguing that he was denied effective assistance of trial counsel, who "failed to contend that appellant's sentence exceeded the applicable statutory maximum, either because due process required the aggravated

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

felony to be alleged in the indictment, or because 1326 is an unconstitutional sentence enhancement." Because these arguments are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 226-27 (1998), trial counsel was not ineffective for not objecting to the sentence on these grounds.

Our independent review of the brief, Cano-Delgado's arguments, and the record discloses no nonfrivolous issue. Accordingly, counsel's motion to withdraw is GRANTED. Counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. See 5TH CIR. R. 42.2.