

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50150
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BAUDELIO LARA-REY,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-00-CR-140-ALL

January 3, 2002

Before DeMOSS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Counsel appointed to represent Baudelio Lara-Rey has moved for leave to withdraw by filing a motion and brief as required by Anders v. California, 386 U.S. 738 (1967). In response to the Anders motion, Lara-Rey argues that the district court erred by increasing his offense level 16 levels, pursuant to U.S.S.G. § 2L1.2(b), for having been previously deported subsequent to his state court conviction for possession of cocaine. He requests that the case be remanded for resentencing without the enhancement for a prior aggravated felony.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Lara-Rey also contends that counsel was ineffective for failing to investigate his case and was ineffective for failing to file a motion for a downward departure based on cultural assimilation. He requests that substitute counsel be appointed to represent him on appeal. Counsel also suggests that he was ineffective at sentencing and requests that Lara-Rey be allowed to file a pro se appellate brief or that substitute counsel be appointed to represent Lara-Rey on appeal. The record has not been adequately developed for us to consider the ineffective-assistance-of-counsel claims on direct appeal. See United States v. Haese, 162 F.3d 359, 363-64 (5th Cir. 1998).

Our independent review of the record, counsel's motion and brief, and Lara-Rey's response thereto discloses no nonfrivolous issue for appeal. 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. Lara-Rey's motion to remand and the motions for appointment of substitute counsel are also DENIED.