

June 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41206
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL FERREYRO-ORTIZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-233-ALL

Before HIGGINBOTHAM, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Retained counsel for Miguel Ferreyro-Ortiz (Ferreyro) has moved for leave to withdraw from this appeal of Ferreyro's sentence for violating 8 U.S.C. § 1326(a) and (b)(2) and has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967). Ferreyro has filed a response, arguing for the first time that the district court erred by enhancing his sentence based on a prior state conviction that he contends was unconstitutionally obtained and that the 16-level increase in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S.S.G. § 2L1.2(b)(1)(A) and 8 U.S.C. §§ 1326(a) and (b)(2) violate international law. He also has filed a motion for the appointment of counsel.

Although not raised by Ferreyro, this court is required to examine jurisdiction *sua sponte* if necessary. See Williams v. Chater, 87 F.3d 702, 704 (5th Cir. 1996). The district court's grant of Ferreyro's motion to withdraw the notice of appeal was filed after his appeal was docketed in this court. Thus, the district court lacked jurisdiction to grant the motion, and this court maintains jurisdiction over the appeal. See United States v. Clark, 917 F.2d 177, 179 (5th Cir. 1990).

Our independent review of the brief, Ferreyro's response, and the record 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. Ferreyro's motion for the appointment of counsel is DENIED.