

December 10, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10100  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FLOYD FREDERICK MCCRARY,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:01-CR-119-1-R  
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Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender (FPD), court-appointed appellate counsel for defendant Floyd Frederick McCrary, has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). McCrary has filed a "Motion to Find Legal Points Arguable on the Merits," which is treated, in part, as a motion for the appointment of counsel.

Our independent review of the brief and the record discloses no nonfrivolous issues for appeal. The FPD's motion

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

for leave to withdraw is GRANTED, the FPD is excused from further responsibilities, and the appeal is DISMISSED. See 5TH CIR.

R. 42.2. Because there is no nonfrivolous issue for appeal, McCrary's motion for the appointment of counsel is DENIED. Cf. United States v. Wagner, 158 F.3d 901, 902-03 (5th Cir. 1998).

We decline to address the ineffective assistance claims raised by McCrary in this proceeding. See United States v. Brewster, 137 F.3d 853, 859 (5th Cir. 1998). Our decision is without prejudice to McCrary's right to assert such claims in a motion pursuant to 28 U.S.C. § 2255. See Massaro v. United States, \_\_\_ U.S. \_\_\_, 123 S. Ct. 1690, 1694 (2003).

ANDERS MOTION GRANTED; APPEAL DISMISSED; MOTION FOR THE APPOINTMENT OF COUNSEL DENIED.