

March 5, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40052
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO ANTONIO VERGARA, also known as Jesus Alfredo Gracia,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-02-CR-192-1

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Counsel appointed to represent Ricardo Antonio Vergara, also known as Jesus Alfredo Gracia, on direct appeal has filed a motion to withdraw and a brief pursuant to Anders v. California, 386 U.S. 738, 744 (1967). Vergara has filed a response raising the following issues: (1) his guilty plea was unknowingly and involuntarily entered; (2) he did not receive sufficient advance notice of the information contained in the presentence report;

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(3) the district court erred in failing to award him a three-level downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1. Vergara also argues that he received ineffective assistance of counsel because counsel had a conflict of interest, failed to let the DEA know that Vergara wanted to talk, and failed to object to alleged errors contained in the original pre-sentence report. We decline to review only Vergara's claim that counsel had a conflict of interest, because the record is insufficiently developed to permit direct review of that claim. See United States v. Maria-Martinez, 143 F.3d 914, 916 (5th Cir. 1998); United States v. Brewster, 137 F.3d 853, 859 (5th Cir. 1998).

Our independent review of the briefs and the record discloses no nonfrivolous issue in this direct appeal. Accordingly, the 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.