

September 28, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41683
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELISEO CUELLAR-ISAGUIRRE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-278-1

Before JOLLY, HIGGINBOTHAM, and PICKERING, Circuit Judges.

PER CURIAM:*

Court-appointed counsel for Eliseo Cuellar-Isaguirre (Cuellar) has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Cuellar has filed a response, arguing that his criminal history was incorrectly calculated, that his base offense level was improperly enhanced for aggravated felonies despite the absence of such felonies in his criminal history, and that his trial

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

attorney provided ineffective assistance by not challenging these facts at sentencing.

Our independent review of the brief, Cuellar's response, and the record discloses no nonfrivolous issue for appeal. To the extent that Cuellar raises claims of ineffective assistance of counsel, the record is not adequately developed for us to consider this issue on appeal. See United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987). 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.