

October 4, 2005

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-50617
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MONCLAVIO BORJORQUE MARTINEZ-MONTOYA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(7:02-CR-101-1)

Before JONES, WIENER, and DeMOSS, Circuit Judges

PER CURIAM:*

The attorney appointed to represent Defendant-Appellant Monclavio Borjorque Martinez-Montoya has filed a motion for leave to withdraw as counsel for appellant in this appeal and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Martinez-Montoya has filed a pro se response and argues, inter alia, that counsel rendered ineffective assistance by failing to object on the basis of the Sixth Amendment and Apprendi v. New Jersey, 530 U.S. 466 (2000). We decline to address Martinez-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Montoya's claim of ineffective assistance of counsel on direct appeal, without prejudice, however, to his raising those claims in a 28 U.S.C. § 2255 motion. See Massaro v. United States, 538 U.S. 500, 508 (2003).

Our independent review of the briefs, the record, and Martinez-Montoya's responses 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.