

July 16, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 03-51045
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-

Appellee,

versus

WILLARD BARRY LIVELY,

Defendant-

Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-02-CR-266-01-H

Before SMITH, DeMOSS and STEWART, Circuit Judges.

PER CURIAM:*

Private counsel appointed to represent Willard Barry Lively has requested leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Lively has filed a response to counsel's motion. Lively's claims alleging ineffective assistance of trial and appellate

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

counsel are not cognizable in the instant appeal. See United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987).

Our independent review of the brief, response, suppression hearing, jury trial, sentencing, and record discloses no nonfrivolous issue for appeal. Counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities, and the appeal is DISMISSED. See 5TH CIR. R. 42.2. Lively's motion to allow counsel to withdraw is DENIED as moot.

COUNSEL'S MOTION TO WITHDRAW GRANTED; LIVELY'S MOTION TO ALLOW COUNSEL TO WITHDRAW DENIED; APPEAL DISMISSED.