

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-51389
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRUCE TERRY,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-03-CR-95-1

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Court-appointed counsel for Bruce Terry has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Terry has filed a response, arguing that his trial attorney provided ineffective assistance and that the prosecutor engaged in misconduct by seeking to have Terry sentenced as a career offender without investigating Terry's criminal history. Terry also asserts that he did not receive the benefit of the representations made by the prosecutor

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to Terry's attorney in order to obtain Terry's guilty plea.

Our independent review of the brief, Terry's response, and the record discloses no nonfrivolous issue for appeal. To the extent that Terry 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. Sanchez-Pena, 336 F.3d 431, 445-46 (5th Cir. 2003). 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.