

January 3, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50376
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VALENTIN HIDALGO-PERALTA,
also known as Valentine Hidalgo-Peralta;
GADIEL HIDALGO-PERALTA,

Defendants-Appellants.

Appeals from the United States District Court
for the Western District of Texas
USDC No. EP-03-CR-2025-4-DB

Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Court appointed counsel for Valentin Hidalgo-Peralta has moved for leave to withdraw in accordance with Anders v. California, 386 U.S. 738 (1967). Hidalgo-Peralta has received a copy of counsel's motion and brief but has not filed a response.

Our independent review of the record discloses one possible nonfrivolous issue for appeal. Hidalgo-Peralta may have an argument that Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004) invalidates his sentence. However, Hidalgo-Peralta's sentence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

was based on the statutory minimum sentence, not the Federal Sentencing Guidelines, and this court has held that Blakely does not apply to the Federal Sentencing Guidelines. United States v. Pineiro, 377 F.3d 464, 473 (5th Cir. 2004), petition for cert. filed (July 14, 2004). Nonetheless, counsel could have raised a potential Blakely issue to preserve it for Supreme Court review. See McKnight v. General Motors Corp., 511 U.S. 659, 660 (1994).

Because our independent review of the record has revealed this possible nonfrivolous issue for appeal, we deny counsel's motion to withdraw. By denying the motion to withdraw, Hidalgo-Peralta has preserved the Blakely issue for further review. We pretermitted further briefing, however, in light of Pineiro, and AFFIRM the judgment of the district court.

Accordingly, counsel's motion for leave to withdraw is DENIED, and the judgment of the district court is AFFIRMED.