

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

May 16, 2008

No. 07-40678
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

HORACIO GALINDEZ-MONTOYA,

Defendant–Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:06-CR-54-1

Before STEWART, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Horacio Galindez-Montoya (Galindez) has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Galindez has filed a response alleging claims of ineffective assistance of counsel.

Insofar as the substantive arguments underlying Galindez’s ineffective-assistance-of-counsel claims can be construed as challenging the voluntariness

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of his guilty plea and the calculation of his guideline sentencing range, those claims have no merit. Galindez has not demonstrated that the district court erred in the calculation of his offense level or his criminal history category. Galindez's assertion that he was forced to proceed without an interpreter is contradicted by the record and is therefore without a factual basis.

The record is insufficiently developed to allow consideration at this time of Galindez's claim that counsel was ineffective for advising him that if he pleaded guilty, he would receive a sentence of imprisonment of 41 to 46 months. Such claims generally "cannot be resolved on direct appeal when [they have] not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations." See *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006)(internal quotation marks and citation omitted). Our independent review of the record, counsel's brief, and Galindez's response discloses no nonfrivolous issue for appeal. Accordingly, the 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.