

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 18, 2008

Charles R. Fulbruge III
Clerk

No. 07-40711
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ELISEO GARCIA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:-06-CR-522-11

Before HIGGINBOTHAM, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Eliseo Garcia has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Garcia has filed a response.

The record is insufficiently developed to allow consideration, at this time, of Garcia's claims of ineffective assistance of counsel. Such claims, generally,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

“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”. *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 Garcia’s response 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. Garcia’s motion for the appointment of new counsel is DENIED.