

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 22, 2011

Lyle W. Cayce
Clerk

No. 11-40192
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JASON LYNN DEESE,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 6:10-CR-92-1

Before GARZA, SOUTHWICK, and HAYNES, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Jason Lynn Deese has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Deese has filed a response. Deese also has filed a motion for rehearing of the Deputy Clerk's order denying his motion to substitute retained counsel for appointed counsel.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-40192

In his pro se response, Deese alleges, without explanation, that his case was presented to the grand jury based on a false statement and that the district court erred by failing to grant him an evidentiary hearing. We will not consider those claims because Deese has not briefed them adequately. *Cf. United States v. Scroggins*, 599 F.3d 433, 446-47 (5th Cir. 2010); FED. R. APP. P. 28(a)(9)(A). Deese also contends that his trial counsel was ineffective by failing to address those issues. The record is insufficiently developed to allow consideration at this time of Deese's claim of ineffective assistance of counsel; such a claim generally "cannot be resolved on direct appeal when the claim has 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) (quotation marks and citation omitted).

We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Deese's remaining claim. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. 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. Deese's motion for rehearing is DENIED.