

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

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No. 13-40056  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 7, 2014

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MALONE BURNS,

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:09-CR-135-1

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Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender appointed to represent Malone Burns 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). Burns has filed a response. The record is insufficiently developed to allow consideration at this time of Burns's claim of ineffective assistance of counsel; such a claim generally "cannot be resolved on direct appeal when the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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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) (internal quotation marks and citation omitted). We have reviewed counsel’s brief and the relevant portions of the record reflected therein, as well as Burns’s response. 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. Burns’s motion to file a motion for reconsideration out of time is GRANTED but his motion for reconsideration and motion for appointment of counsel are DENIED.