

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

No. 16-11325
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 28, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RUDY GARCIA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:16-CR-11-1

Before JOLLY, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Rudy Garcia 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). Garcia has filed a response. The record is not sufficiently developed to allow us to make a fair evaluation of Garcia's claim of ineffective assistance

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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of counsel; we therefore decline to consider the claim without prejudice to collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014).

We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Garcia's response. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review and dispense with further briefing. However, the district court's written judgment fails to reflect the dismissal of counts two, three, and four of the indictment. These counts were dismissed by the district court on the Government's motion. Additionally, the written judgment incorrectly states that the offense of conviction involved "amphetamine" when in fact the offense involved "methamphetamine." A remand to correct such clerical errors is proper. *See* FED. R. CRIM. P. 36.

Accordingly, counsel's motion for leave to withdraw is GRANTED, Garcia's conviction and sentence are AFFIRMED, and the case is REMANDED to the district court with the instructions to correct the judgment to reflect the dismissal of counts two, three, and four of the indictment and to replace "amphetamine" with "methamphetamine." Garcia's motion for appointment of counsel is DENIED.