

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

No. 19-20032
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 19, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSEPH BERZAT,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CR-254-1

Before STEWART, DENNIS, and HO, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Joseph Berzat 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). Berzat has filed a response and an incorporated motion to appoint new counsel, which is DENIED. The record is not sufficiently developed to allow us to make a fair evaluation of Berzat's claim of ineffective assistance of counsel; we

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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therefore decline to consider the claim without prejudice to his petition for 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 Berzat's response. We concur in counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. To the extent that Berzat challenges Count 2 of his conviction for aiding and abetting the use and discharge of a firearm during the commission of a crime of violence and his sentence, his arguments are barred by the waiver provision in his knowing and voluntary plea agreement. 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.