

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40507
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER BARRAZA-VASQUEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-97-CR-384-1
- - - - -

July 6, 1999

Before WIENER, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Javier Barraza-Vasquez has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738, 744 (1967). Barraza has filed a response to the motion, contending that his attorney erroneously told him that his sentence would be less than it was and that the district court erred in failing to depart downward because his criminal history category was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

overrepresented. The record has not been adequately developed to consider Barraza's ineffective-assistance claim on direct appeal. See United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987); United States v. Delagarza-Villarreal, 141 F.3d 133, 140-41 (5th Cir. 1998). Barraza's challenge to the district court's failure to depart downward is unreviewable on appeal because there is no indication that the district court believed it did not have the authority to do so. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994).

Our independent review of the brief and the record discloses no nonfrivolous appellate issue. 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.