

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50853
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO TORRES SANDOVAL,
also known as Richard LNU,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-97-CR-157-1
- - - - -

August 25, 1999

Before KING, Chief Judge, and DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

Court-appointed counsel for Ricardo Torres Sandoval has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Sandoval has received a copy of counsel's motion and brief, but has not filed a response.

As part of the plea agreement, Sandoval waived the right to appeal any aspect of his conviction and sentence. The waiver did not apply to ineffective assistance of counsel or prosecutorial

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

misconduct of constitutional dimension of which Sandoval did not have knowledge at the time of sentencing.

We have reviewed the record and find that Sandoval's waiver of his right to appeal was informed and voluntary. United States v. Melancon, 972 F.2d 566, 567 (5th Cir. 1992). Thus, unless circumstances exist which implicate the two exceptions of the waiver-of-appeal provision, the waiver precludes any direct appeal. See id.

Court-appointed counsel suggests that this court may want to appoint substitute counsel for the purpose of reviewing the sentencing proceedings, in light of Sandoval's assertion at sentencing that counsel was ineffective. To the extent that counsel suggests that there may exist a nonfrivolous ineffectiveness claim, the record has not been adequately developed for us to consider such a claim on direct appeal. See United States v. Scott, 159 F.3d 916, 924 (5th Cir. 1998). Thus, counsel's request that substitute counsel be appointed is DENIED.

Our independent review of the brief and the record discloses no nonfrivolous appellate issues. Accordingly, the motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED.