

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-51023
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO ROJAS-GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-99-CR-1042-DB

April 12, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Ricardo Rojas-Gonzales moves to withdraw as appellate counsel and has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Rojas pleaded guilty to illegal reentry following deportation in violation of 8 U.S.C. § 1326 and was sentenced to 41 months' imprisonment, followed by three years' supervised release, and the mandatory special assessment of \$100. Rojas directed his counsel to appeal only his sentence, and counsel addresses only the sentence adjudged against Rojas.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rojas has filed a response. He concedes that his argument that mere possession of heroin does not qualify as an aggravated felony for purposes of U.S.S.G. § 2L1.2(b) is precluded by our decision in *United States v. Hinojosa-Lopez*, 130 F.3d 691 (5th Cir. 1997), but states that he wishes to preserve this issue for review by the United States Supreme Court. He also argues that his due process rights were violated because the term "drug trafficking crime" is vague and does not provide adequate notice.

Our independent review of the brief and the record discloses no nonfrivolous issue. Accordingly, the motion to withdraw is GRANTED; counsel is excused from further responsibilities herein; and the appeal is DISMISSED. 5TH CIR. R. 42.2.

MOTION GRANTED; APPEAL DISMISSED.