

April 17, 2003

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 01-40470
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SERGIO ZUNIGA RICO,
also known as Juan Martinez Lopez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-R-494-1

Before JONES, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

Court-appointed counsel for Sergio Zuniga Rico ("Rico"), Ignacio Torteya, III, has filed a second motion to withdraw and a supplemental brief pursuant to Anders v. California, 386 U.S. 738 (1967). Rico has filed a response wherein he argues that the district court erred in considering his 1982 aggravated-robbery conviction in assessing his sentence. Rico also argues that the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court erred in ordering that the sentence imposed for the instant offense run consecutively to the sentence imposed upon the revocation of his supervised release. Our review of the brief filed by counsel and of the record discloses no nonfrivolous point for appeal. Accordingly, the motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities with respect to the representation of Rico, and the APPEAL IS DISMISSED. See 5TH CIR. R. 42.2.

Although it is clear that Rico's appeal presents no nonfrivolous issue, counsel's work in this appeal was of little assistance to this court. Upon denying without prejudice counsel's first motion to withdraw, this court directed counsel to file a supplemental brief addressing the voluntariness of Rico's guilty plea. However, counsel has merely resubmitted an identical copy of his original brief to which he has added a single statement indicating the date on which Rico was rearraigned. The supplemental brief contains no discussion of the voluntariness of the plea, or of the requirements of FED. R. CRIM. P. 11. Accordingly, Torteya is ORDERED to show cause, within 15 days from the date of this opinion, why this court should not order that he not receive payment for services rendered and expenses incurred in this appeal.

APPEAL DISMISSED; COUNSEL ORDERED TO SHOW CAUSE.