

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

United States Court of Appeals
Fifth Circuit

FILED

May 18, 2011

Lyle W. Cayce
Clerk

No. 10-50244
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PETE RIVERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 1:07-CR-164-18

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Pete Rivera has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Rivera has filed a response in which he asserts that trial counsel rendered ineffective assistance, and he requests new counsel.

The issue whether counsel rendered ineffective assistance by failing to file a notice of appeal has already been resolved and presents no nonfrivolous issue for appeal. Further, a claim of ineffective assistance of counsel generally “cannot be resolved on direct appeal when the claim has not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations.” *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). It is not apparent from the record that Rivera’s sentence was the result of ineffective assistance. Thus, the record is insufficiently developed to allow consideration of any other claims of ineffective assistance.

We have reviewed counsel’s brief and the relevant portions of the record reflected therein, as well as Rivera’s response. We concur with counsel’s assessment that the appeal presents no unwaived, nonfrivolous issue for appellate review. Accordingly, the motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, Rivera’s request for new counsel is DENIED, and the appeal is DISMISSED. *See* 5TH CIR. R. 42.2.