

United States Court of Appeals for the Fifth Circuit

No. 22-50492
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 20, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NICHOLE PITTMAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:22-CR-13-2

Before ELROD, SOUTHWICK, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

The attorney appointed to represent Nichole Pittman has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Pittman has not filed a response. We have reviewed counsel's brief and the relevant portions of the record reflected in the brief. We concur with

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-50492

counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities in this case, and the appeal is DISMISSED. *See* 5TH CIR. R. 42.2.

Our review reveals a clerical error in the written judgment. The district court ordered orally that Pittman's sentence will run consecutively to any sentence imposed in a pending charge in the 161st Judicial District Court in Odessa, Texas, case number B-22-0069-CR. The written judgment, however, notes that her sentence will run concurrently to any sentence imposed in B-22-0069-CR. "The terms of an oral pronouncement that clearly provide for a consecutive or concurrent sentence control a contrary, silent or ambiguous written judgment." *United States v. McAfee*, 832 F.2d 944, 946 (5th Cir. 1987). Accordingly, this matter is REMANDED for the limited purpose of correcting the clerical error in the judgment. *See* FED. R. CRIM. P. 36.