

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-40073
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFONSO ROLANDO GARCIA-ALANIZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-98-CR-556-1

December 15, 1999

Before JOLLY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Alfonso Rolando Garcia-Alaniz has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738, 744 (1967). Garcia has filed a response to the motion, contending that the illegal-reentry statutes violate the Equal Protection Clause because drug possession is considered an underlying crime for recidivism purposes for illegal reentry but is not for other offenses. Garcia also maintains that he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

received ineffective assistance of counsel because his attorney failed to file objections to the presentence investigation report (PSR) and that he was entitled to various downward departures. Because Garcia pleaded guilty to this offense, he has waived all nonjurisdictional challenges to his conviction. Barrientos v. United States, 668 F.2d 838, 842-43 (5th Cir. 1982). The record has not been adequately developed to consider Garcia's ineffective-assistance claim on direct appeal. See United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987). Garcia's challenge to the district court's refusal to depart downward is unreviewable on appeal because there is no indication that the district court believed it did not have the authority to do so. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994). Garcia's other requests for downward departures either do not give a basis for granting such a departure or were awarded to Garcia through a three-level reduction for acceptance of responsibility.

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