

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 10, 2008

\_\_\_\_\_  
No. 07-40653  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ROBERT WILLIAM AYERS, III

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:07-CR-57-3  
\_\_\_\_\_

Before DAVIS, WIENER, and PRADO, Circuit Judges.

PER CURIAM:\*

The attorney appointed to represent Robert William Ayers, III, has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Ayers has filed a response. The record is insufficiently developed to allow consideration at this time of Ayers's claim of ineffective assistance of counsel; such claims generally "cannot be resolved on direct appeal when [they have] not been raised before the district court since no

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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).

Our independent review of the record, counsel’s brief, and Ayers’s response discloses no nonfrivolous issue for appeal. Accordingly, counsel’s 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. Ayers’s motion for the appointment of new counsel and his motion to vacate the district court’s judgment and remand the case are DENIED.