

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 15, 2008

No. 08-40255

Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

DEMAS CORTEZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
(07-CR-731)

Before WIENER, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

The Federal Public Defender (FPD) appointed to represent Defendant-Appellant Demas Cortez has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Cortez has filed a response. This court is not able to resolve on direct appeal Cortez's argument, raised for the first time on appeal, that the Government breached the plea agreement because the record is lacking in factual predicate concerning the existence of any subsidiary promise. See *United States v.*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Corbett, 742 F.2d 173, 175-76 (5th Cir. 1984). Our independent review of the record, counsel's brief, and Cortez'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.