

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

June 16, 2009

---

No. 08-50811  
Conference Calendar

---

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

OLAYA GARCIA-ORRANTIA, also known as Sandra Garcia

Defendant-Appellant

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:08-CR-720-ALL

---

Before SMITH, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:\*

The attorney appointed to represent Olaya Garcia-Orrantia has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Garcia-Orrantia has filed a response in which she moves for the appointment of new appellate counsel and alleges ineffective assistance of plea counsel and appellate counsel.

The record is insufficiently developed to allow consideration at this time of Garcia-Orrantia's claim of ineffective assistance of counsel; such claims

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

generally “cannot be resolved on direct appeal when [they have] 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). Because she waited until after an *Anders* brief was filed, Garcia-Orrantia’s motion for appointment of new counsel is DENIED as untimely. *Cf. United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).

Our independent review of the record, counsel’s brief, and Garcia-Orrantia’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.