

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 16, 2010

Lyle W. Cayce
Clerk

No. 09-10693

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MELVIN WIAND,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:07-CR-352-1

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Melvin Wiand has filed a motion seeking leave to withdraw together with a supporting brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and Wiand has filed a response. The record is insufficiently developed to allow consideration at this time of Wiand's contention that he received ineffective assistance of counsel; such assertions generally "cannot be resolved on direct appeal when [they have] not been raised before the district court since no opportunity existed to develop

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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 Wiand’s response discloses no nonfrivolous issue for appeal. Accordingly, his counsel’s motion for leave to withdraw is GRANTED, his counsel is excused from further responsibilities herein, and his appeal is DISMISSED.¹

¹ See 5TH CIR. R. 42.2.