IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 4, 2011
Lyle W. Cayce
Clerk

No. 09-20858

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALEX FRANCISCO GARCIA ARGUEDAS, also known as Alex Garcia, also known as Alex Francisco Garcia, also known as Alex Garcia-Arguedas, also known as Alex Garcia Argtuedas, also known as Alex Francisco Garcia-Arguedas,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CR-297-1

Before JOLLY, ELROD and HAYNES, Circuit Judges.

PER CURIAM:[*]

Alex Francisco Garcia Arguedas entered a plea of guilty to a one-count indictment of having been found illegally present in the United States subsequent to having been convicted of a felony, in violation of 8 U.S.C. §1326(a) and (b)(1). He was sentenced to serve 29 months in prison and a three year term of supervised release. He subsequently appealed.

[*] Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.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 attorney appointed to represent Garcia has now moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). If an *Anders* brief is adequate on its face, as is the case here, then we "confine our scrutiny of the record to the portions of it that relate to the issues discussed in the brief." *United States v. Flores*, No. 09-41281, 2011 WL 309173, at *4 (5th Cir. Jan. 31, 2011) (not yet published); *see also United States v. Garland*, No. 09-50317, 2011 WL 311024, at *2 (5th Cir. Jan. 31, 2011) ("if counsel submits a brief meeting [the *Anders* standard], we will no longer independently scour the record looking for nonfrivolous issues") (not yet published). Garcia has filed a pro se response. His only argument, essentially, is that this court should reconsider *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) —where the Supreme Court rejected the argument that 8 U.S.C. §1326 is unconstitutional as applied and on its face — in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Although we acknowledge that Garcia is attempting to preserve his argument for review by the Supreme Court, we have held that this issue "no longer serves as a legitimate basis for appeal." *See United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007) (holding that this argument is "fully foreclosed" by the Supreme Court's decision in *James v. United States*, 550 U.S. 192, 213 n.8 (2007)); *see also United States v. Olalde-Hernandez*, 630 F.3d 372, 377 (5th Cir. 2011). Therefore, our independent review of the record, counsel's brief, and Garcia'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.