

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

United States Court of Appeals  
Fifth Circuit

**FILED**

April 20, 2010

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 09-40519

Conference Calendar  
\_\_\_\_\_

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KENNETH MARTIN APGAR,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:08-CR-534-1  
\_\_\_\_\_

Before SMITH, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:\*

The attorney appointed to represent Kenneth Martin Apgar has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Apgar has filed a response, in which he makes a request for appointment of substitute counsel. Our independent review of the record, counsel's brief, and Apgar'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.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

See 5TH CIR. R. 42.2. Apgar's motion for appointment of substitute counsel is DENIED. *Cf. United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).