

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

United States Court of Appeals
Fifth Circuit

FILED

August 16, 2012

Lyle W. Cayce
Clerk

No. 11-40638

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE ANTONIO CARBAJAL-SOTO,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:11-CR-271-1

Before WIENER, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

A member of this panel previously carried with the case the Federal Public Defender's motion to withdraw as counsel and further ordered the filing of a supplemental *Anders* brief or a brief on the merits. The panel has considered the Federal Public Defender's motion for reconsideration. **IT IS ORDERED** that the motion is **GRANTED**.

IT IS FURTHER ORDERED that the motion for an extension of 30 days from the date of this ruling to file appellant's brief is **DENIED AS MOOT**.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-40638

The Federal Public Defender appointed to represent Jose Antonio Carbajal-Soto has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Carbajal-Soto has filed a response, which includes a claim of ineffective assistance of counsel. The record is insufficiently developed to allow consideration at this time of Carbajal-Soto's claim of ineffective assistance of counsel; such a claim generally "cannot be resolved on direct appeal when the claim has 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) (quotation marks and citation omitted). We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Carbajal-Soto's response. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. Accordingly, the 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. Carbajal-Soto's motion for the appointment of counsel is DENIED.