

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

United States Court of Appeals
Fifth Circuit

FILED

August 2, 2013

Lyle W. Cayce
Clerk

No. 11-51047

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARK ANTHONY GARCIA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:11-CR-95-1

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Mark Anthony Garcia has moved for leave to withdraw and has filed a supplemental brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). In response to the motion, Garcia requests that we strike counsel's brief, extend the briefing period, and appoint new appellate counsel. We have reviewed counsel's brief and the record. We concur with counsel's assessment that the appeal presents no nonfrivolous issue; however, we do not address

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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counsel's discussion of the adequacy of trial counsel's performance as the issue was not raised in the district court and the record has not been developed for appellate review. *See United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006). Accordingly, Garcia's motions to strike the brief, extend the briefing period, and appoint substitute counsel are DENIED; 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.