

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

United States Court of Appeals
Fifth Circuit

FILED

February 19, 2013

Lyle W. Cayce
Clerk

No. 12-40054

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ERIC LAMONT ALBERTY,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:09-CR-197-2

Before KING, CLEMENT, and HAYNES, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Eric Lamont Alberty 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). Alberty has filed a response and moved for the appointment of new counsel. We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Alberty's response. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. The record is

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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insufficiently developed to allow consideration at this time of Alberty's claims of ineffective assistance of counsel; such claims generally "cannot be resolved on direct appeal when [they have] 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) (internal quotation marks and citation omitted). 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. Alberty's motion for appointment of new counsel is DENIED.