

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

United States Court of Appeals
Fifth Circuit

FILED

August 5, 2014

Lyle W. Cayce
Clerk

No. 13-10346
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HOMERO MARTINEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:12-CR-209-1

Before SMITH, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Homero Martinez 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).

Martinez has filed a pro se response, which includes a motion for leave to proceed pro se on appeal (or to allow him to proceed with retained counsel) and to strike counsel's *Anders* brief. To the extent he seeks leave to proceed

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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with retained counsel, a judge of this court has previously denied a similar motion to substitute retained counsel. *See United States v. Martinez*, No. 13-10346 (5th Cir. Mar. 26, 2014). We now DENY his motions for leave to proceed pro se and to strike counsel's *Anders* brief as untimely filed. *See United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).

In his response, Martinez argues that he received ineffective assistance of counsel at sentencing. The record is not sufficiently developed to allow us to make a fair evaluation of Martinez's claim of ineffective assistance; we therefore decline to consider the claim without prejudice to collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014), *petition for cert. filed* (June 4, 2014) (No. 13-10484).

We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as the remainder of Martinez'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.