

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

No. 14-40758
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 1, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CESAR ARMIJO-MERCADO,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:14-CR-557-1

Before PRADO, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:*

The Federal Public Defender (FPD) appointed to represent Cesar Armijo-Mercado 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). Armijo-Mercado has filed a response.

Included in Armijo-Mercado's response is a claim that counsel was ineffective for not arguing that Armijo-Mercado should receive a third point for

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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acceptance of responsibility. We generally do not review claims of ineffective assistance of counsel on direct appeal. *United States v. Isgar*, 739 F.3d 829, 841 (5th Cir.), *cert. denied*, 135 S. Ct. 123 (2014). However, this is one of those “rare cases in which the record” permits us to “fairly evaluate the merits of the claim.” *Id.* (internal quotation marks and citations omitted). The FPD requested a third point for acceptance of responsibility in his objections to the presentence report, and Armijo-Mercado received that point at sentencing. Accordingly, Armijo-Mercado has not shown counsel was ineffective with respect to the points assigned for acceptance of responsibility. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984). To the extent that Armijo-Mercado’s response raises other claims of ineffective assistance of counsel, the record is not sufficiently developed to allow us to make a fair evaluation of those claims; we therefore decline to consider those claims without prejudice to collateral review. *See Isgar*, 739 F.3d at 841.

We have reviewed counsel’s brief and the relevant portions of the record reflected therein, as well as Armijo-Mercado’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.*