

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

\_\_\_\_\_  
No. 16-10248  
Conference Calendar  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

December 20, 2016

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSIMAR BADILLO-ORTIZ,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:15-CR-236-3  
\_\_\_\_\_

Before DENNIS, PRADO, and OWEN, Circuit Judges.

PER CURIAM:\*

The attorney appointed to represent Josimar Badillo-Ortiz 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). Badillo-Ortiz has filed a response. The record is not sufficiently developed to allow us to make a fair evaluation of Badillo-Ortiz's claims of ineffective assistance of counsel; we therefore decline to consider the claims without

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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prejudice to collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014).

We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Badillo-Ortiz's response. In his response, Badillo-Ortiz disputes the drug quantity for which he was held accountable. Badillo-Ortiz's trial counsel did not object to the drug quantity at sentencing. Because drug quantity is a factual finding, and Badillo-Ortiz failed to properly object in the district court, Badillo-Ortiz's drug quantity challenge cannot succeed on plain error review. *See United States v. Conn*, 657 F.3d 280, 284-86 (5th Cir. 2011). We therefore agree 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.