

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

No. 16-10704
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
September 1, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EMMITT HERRERA, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-55-2

Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Emmitt Herrera, Jr., has moved for leave to withdraw and has filed a brief and 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). Herrera has filed a response. The record is not sufficiently developed to allow us to make a fair evaluation of Herrera's claims of ineffective assistance of counsel; we therefore decline to consider the claims

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-10704

without prejudice to collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014). The motion for appointment of substitute counsel is DENIED as untimely. *See United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).

We have reviewed counsel's briefs and the relevant portions of the record reflected therein, as well as Herrera'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.