

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50143
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 1, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LEANDRO PERFECTO CORTES-MELENDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:16-CR-1068-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Leandro Perfecto Cortes-Melendez 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). Cortes-Melendez has filed a response, but does not assert any grounds for appeal other than possible ineffective assistance of counsel. Because the record is not sufficiently developed to allow

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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us to make a fair evaluation of this claim, we therefore decline to consider it on direct review. Our decision not to reach this issue is without prejudice to collateral review and does not prevent Cortes-Melendez from raising his ineffective assistance of counsel claim under 28 U.S.C. § 2255. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014).

“If counsel finds [a] case to be wholly frivolous, after a conscientious examination of it,” she may request permission to withdraw after filling “a brief referring to anything in the record that might arguably support the appeal.” *Anders*, 386 U.S. at 744. This court “then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Id.* We have reviewed counsel’s brief and the relevant portions of the record reflected therein, as well as Cortes-Melendez’s response, and hold that the appeal presents no non-frivolous issue for our review.

Because Cortes-Melendez declared in writing his decision not to appeal his conviction, we consider potential challenges to his sentencing only. *See United States v. Garcia*, 483 F.3d 289, 291 (5th Cir. 2007). The record presents no non-frivolous argument that the district court erred in calculating his Guidelines range, or that the sentence imposed was procedurally or substantively unreasonable. 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. Cortes-Melendez’s motion for the appointment of substitute counsel is DENIED.