

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

No. 17-50903
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 3, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE CANDELARIO OLIVARES-BENAVIDES,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 2:17-CR-390-1

Before DAVIS, COSTA, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Jose Candelario Olivares-Benavides 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). Olivares-Benavides has filed a response. Olivares-Benavides argues that the district court erred in failing to give him a third point for acceptance of responsibility; that the district court

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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erred in finding that he had 12 prior misdemeanor convictions versus 11 prior misdemeanor convictions; that the district court effectively ignored the 2016 amendment to U.S.S.G. § 2L1.2 by sentencing him to an above-guidelines sentence; and that counsel was ineffective for failing to challenge the district court's sentencing determination on the aforementioned grounds and based upon the ground that counsel failed to challenge the district court's alleged inadequate explanation for the upward variance. The record is sufficiently developed to allow us to make a fair evaluation of Olivares-Benavides's claims of ineffective assistance of counsel. *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 Olivares-Benavides'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.