

United States Court of Appeals for the Fifth Circuit

No. 23-50252
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 6, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ETHAN ELI TINNEY,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:21-CR-49-1

Before KING, HAYNES, and GRAVES, *Circuit Judges.*

PER CURIAM:*

The attorney appointed to represent Ethan Eli Tinney 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). Tinney has filed a response. The record is not sufficiently developed to allow us to make a fair evaluation of Tinney's claims of ineffective assistance of

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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counsel; we therefore decline to consider the claims without 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 Tinney'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.*

We note, however, that the district court was without jurisdiction to amend the judgment during the pendency of this appeal. *See United States v. Lucero*, 755 F. App'x 384, 386-87 (5th Cir. 2018); *see also United States v. Willis*, 76 F.4th 467, 471-72 (5th Cir. 2023) (citing *Lucero*). Thus, the original judgment stands. We treat the district court's April 13, 2023, amended judgment as an indicative ruling. The amended judgment is VACATED for want of jurisdiction, and the case is REMANDED for the limited purpose of re-entry of the amended judgment.