

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-41409
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TOMAS MALDONADO, SR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-00-CR-234-1

December 14, 2001

Before JONES, SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Court-appointed counsel representing Tomas Maldonado, Sr., has moved for leave to withdraw and has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Maldonado has filed a pro se response to counsel's Anders brief, asserting that he was denied effective assistance of counsel because his sentencing counsel failed to file an objection to the presentence report's recommendation of a consecutive sentence and failed to cite U.S.S.G. § 5G1.3 in arguing for a concurrent sentence. The record has not been adequately developed for us to consider in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

this direct appeal the ineffective assistance claims raised by Maldonado and his counsel. See United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987).

Our independent review of the record, counsel's brief, and Maldonado's response shows that there are no nonfrivolous issues for appeal. Consequently, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, the APPEAL IS DISMISSED, and Maldonado's motion to substitute counsel is DENIED AS MOOT. See 5th Cir. R. 42.2.