

May 6, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50682
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JULIO HERNANDEZ-REYES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
UDC No. EP-00-CR-1505-ALL-DB

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Julio Hernandez-Reyes was convicted, pursuant to a plea of guilty, of attempting to illegally reenter the United States in violation of 8 U.S.C. § 1326. Counsel appointed to represent Hernandez has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Hernandez has received a copy of counsel's brief and has filed a response.

Hernandez challenges his indictment and conviction on the ground that he had not "entered" or been "found in" the United States. He further argues that trial counsel was ineffective for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

failing to investigate the facts of his case and challenge his indictment and conviction on that same ground. Hernandez also argues that counsel appointed to represent him on appeal was ineffective for failing to raise this same argument on direct appeal.

In this case, the record was sufficiently developed for us to review Hernandez' claims of ineffective assistance of counsel. Our independent review of the brief, the record, and Hernandez' response discloses that there is no nonfrivolous issue for appeal. Accordingly, counsel's 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.