

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41588
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BEATRICE B. MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:02-CR-96-ALL

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Beatrice B. Martinez has moved for leave to withdraw and has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Martinez did not file a response.

This case is an appeal from the denial of a motion for a new trial filed under FED. R. CRIM. P. 33. The district court denied the motion for lack of jurisdiction because the motion was untimely filed. The motion was a collateral attack on the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

underlying conviction, and therefore the right to counsel did not attach. See Pennsylvania v. Finley, 481 U.S. 551 (1987).

Nevertheless, this court applies the principles enunciated in Anders to determine whether counsel should be permitted to withdraw. See Dinkins v. Alabama, 526 F.2d 1268, 1269 (5th Cir. 1976).

The instant appeal is limited to the district court's denial of Martinez's motion for a new trial. Our independent review of counsel's brief and the record discloses no nonfrivolous issue for appeal. 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.