

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-40239  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOEY LYNN KIRKS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:98-CR-118-1  
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November 11, 1999

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender appointed to represent Joey Lynn Kirks has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Kirks has filed a brief in response to the motion in which he argues that he was denied the effective assistance of counsel.\*\*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

\*\* Kirks raised the issue of ineffective assistance of counsel for the first time in his response to his attorney's Anders motion; the record contains no factual findings on the issue of counsel's alleged deficiencies. Kirks's case does not represent one of the rare instances where the record allows this court to evaluate fairly the merits of an ineffectiveness claim on direct appeal. See United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987). Any ineffective assistance of counsel claim that Kirks wishes to bring may be raised in a 28 U.S.C. § 2255 motion. See United States v. Pierce, 959 F.2d 1297, 1301 (5th Cir. 1992).

Our independent review of the brief filed by counsel, of Kirks's response to that brief, and of the record reveals no nonfrivolous issue for appeal. Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities, and the APPEAL IS DISMISSED.