

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-40317
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS ALEJANDRO GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(C-98-CR-291-1)

January 4, 2000

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

The federal public defender appointed to represent Jesus Alejandro Garcia has moved for leave to withdraw and has filed a brief as required by *Anders v. California*, 386 U.S. 738 (1967). Garcia has filed a response to counsel's motion, asserting that the district court erred by failing to find that he met the requirements of the "safety valve" provision of 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2; that he was denied his right to allocution; that he was denied effective assistance of counsel, because counsel failed to move for a downward departure based on Garcia's status as

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a deportable alien; and that the use at sentencing of statements he made to a jailhouse informant violated his right to counsel.

The record has *not* been adequately developed for us to consider Garcia's ineffective-assistance-of-counsel argument on direct appeal. See *United States v. Gibson*, 55 F.3d 173, 179 (5th Cir. 1995). Our independent review of the briefs and the record discloses *no* nonfrivolous appellate issue. Accordingly, the motion for leave to withdraw is **GRANTED**, counsel is excused from further responsibilities herein, and the appeal is

DISMISSED.