

United States Court of Appeals
Fifth Circuit

FILED

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41327
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TEODORO CHARLES CASTILLO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-407-1

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Appointed counsel for Teodoro Charles Castillo has moved for permission to withdraw from this criminal appeal and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Castillo has filed a response in which he requests to represent himself on appeal. Castillo's motion to proceed pro se on appeal is DENIED as untimely. United States v. Wagner, 158 F.3d 901, 902-03 (5th Cir. 1998). Our independent review of counsel's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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brief, Castillo's response, and the record discloses no nonfrivolous issue for appeal.

We decline to address Castillo's argument that counsel did not adequately explain to him the provision in his plea agreement waiving certain appellate rights. See United States v. Price, 95 F.3d 364, 369 (5th Cir. 1996). Our decision is without prejudice to Castillo's right to raise this claim in a motion pursuant to 28 U.S.C. § 2255. Massaro v. United States, 538 U.S. 500, ___, 123 S. Ct. 1690, 1694 (2003).

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.