

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Rodolfo Martinez, Sr.

No. 18-20720, United States Court of Appeals for the Fifth Circuit (July 23, 2019)

SUMMARY

Fifth Circuit granted appointed counsel's motion to withdraw under **Anders v. California**, 386 U.S. 738 (1967), and **United States v. Flores**, 632 F.3d 229 (5th Cir. 2011), after determining that the appeal presented no nonfrivolous issues. The court dismissed the direct criminal appeal from the Southern District of Texas. This unpublished, non-precedential opinion addresses the standard for frivolous appeals and the procedure for counsel withdrawal in criminal cases.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Patrick E. Higginbotham; Edith H. Jones; Stephen A. Higginson
JURISDICTION	Federal
DECIDED	July 23, 2019
DOCKET	18-20720
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from conviction and sentence; Anders motion to withdraw
STANDARD OF REVIEW	Review of counsel's assessment that the appeal presents no nonfrivolous issues
PRECEDENTIAL VALUE	Unpublished
PARTIES	Rodolfo Martinez, Sr. v. United States of America

TOPICS

- criminal procedure
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- criminal procedure
- appellate procedure
- standard of review
- preservation of error

QUESTIONS PRESENTED

1. Whether the appeal presents any nonfrivolous issue for appellate review

HOLDINGS

1. The appeal presents no nonfrivolous issue for appellate review.

KEY QUOTATIONS

“We concur with counsel’s assessment that the appeal presents no nonfrivolous issue for appellate review.”
(page 2)

“Accordingly, counsel’s motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED.” (page 2)

FACTUAL BACKGROUND

The opinion does not discuss the underlying facts of the criminal case. The appeal challenged the conviction and sentence, but counsel determined no nonfrivolous issues existed.

PROCEDURAL HISTORY

Martinez appealed his conviction and sentence. His appointed counsel moved to withdraw under *Anders v. California*, 386 U.S. 738 (1967), and filed a brief asserting no nonfrivolous issues. Martinez did not respond.

DISPOSITION

dismissed

CASES CITED

- *Anders v. California*, 386 U.S. 738 (1967)
- *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011)

OPINION

PER CURIAM.

Case: 18-20720 Document: 00515045617 Page: 1 Date Filed: 07/23/2019 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit No. 18-20720 FILED Conference Calendar July 23, 2019 Lyle W. Cayce Clerk UNITED STATES OF AMERICA, Plaintiff-Appellee v. RODOLFO MARTINEZ, SR., Defendant-Appellant Appeals from the United States District Court for the Southern District of Texas USDC No. 4:17-CR-561-1 Before HIGGINBOTHAM, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM: * The attorney appointed to represent Rodolfo Martinez, Sr., has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Martinez has not filed a response.

We have reviewed counsel's brief and the relevant portions of the record reflected therein. We concur with counsel's assessment that the appeal presents no nonfrivolous issue 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. Case: 18-20720 Document: 00515045617 Page: 2 Date Filed: 07/23/2019 No. 18-20720 appellate review. 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. 2