

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Sayasane

No. 20-10565, United States Court of Appeals for the Fifth Circuit (March 12, 2021)

SUMMARY

In this unpublished Fifth Circuit opinion, the court granted counsel's motion to withdraw under **Anders v. California** and dismissed the direct appeal, finding no nonfrivolous issues. The court declined to consider the defendant's ineffective-assistance-of-counsel claim on direct appeal because the record did not permit fair evaluation, noting such claims are generally reserved for collateral review. The court also denied the defendant's pro se motion for appointment of new counsel as untimely.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Edith H. Jones; Edith Brown Clement; Catharina Haynes
JURISDICTION	Federal
DECIDED	March 12, 2021
DOCKET	20-10565
DISPOSITION	dismissed
PROCEDURAL POSTURE	Direct appeal from criminal conviction
PRECEDENTIAL VALUE	Unpublished
PARTIES	Phouphet Sayasane v. United States of America

TOPICS

criminal procedure

appellate procedure

ineffective assistance

right to counsel

PRACTICE AREAS

Criminal

QUESTIONS PRESENTED

1. Whether the appeal presents any nonfrivolous issues for direct appellate review.
2. Whether the defendant's claim of ineffective assistance of counsel can be considered on direct appeal.

HOLDINGS

1. The appeal presents no nonfrivolous issue for direct appellate review.
2. The claim of ineffective assistance of counsel cannot be considered on direct appeal because this is not a rare case where the record allows fair evaluation.

KEY QUOTATIONS

"We have previously determined that such claims "should not be litigated on direct appeal, unless they were previously presented to the trial court. It is only in rare cases in which the record allows a reviewing court to fairly evaluate the merits of the claim that we will consider such a claim." United States v. Isgar, 739 F.3d 829, 841 (5th Cir. 2014) (internal quotation marks and footnotes omitted)." (2)

"We concur with counsel's remaining assessment that the appeal presents no nonfrivolous issue for direct appellate review." (2)

FACTUAL BACKGROUND

The defendant was convicted in the district court. The Federal Public Defender filed an Anders brief, stating that the appeal presents no nonfrivolous issues. The defendant filed a response alleging ineffective assistance of counsel.

PROCEDURAL HISTORY

Defendant was convicted in the United States District Court for the Northern District of Texas and appealed.

DISPOSITION

dismissed

CASES CITED

- Anders v. California, 386 U.S. 738 (1967)
- United States v. Flores, 632 F.3d 229 (5th Cir. 2011)
- United States v. Isgar, 739 F.3d 829 (5th Cir. 2014)
- United States v. Wagner, 158 F.3d 901 (5th Cir. 1998)

OPINION

PER CURIAM.

Case: 20-10565 Document: 00515778060 Page: 1 Date Filed: 03/12/2021 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED March 12, 2021 No. 20-10565 Lyle W. Cayce Conference Calendar Clerk United States of America, Plaintiff—Appellee, versus Phouphet Sayasane, Defendant—Appellant. Appeal from the United States

District Court for the Northern District of Texas USDC No. 2:18-CR-95-1 Before Jones, Clement, and Haynes, Circuit Judges.

Per Curiam:* The Federal Public Defender appointed to represent Phouphet Sayasane 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). Sayasane has filed a response.

We have reviewed counsel's * Pursuant to 5th Circuit Rule 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 Circuit Rule 47.5.4. Case: 20-10565 Document: 00515778060 Page: 2 Date Filed: 03/12/2021 No. 20-10565 brief and the relevant portions of the record reflected therein, as well as Sayasane's response.

Sayasane alleges, among other things, that his counsel was ineffective. We have previously determined that such claims "should not be litigated on direct appeal, unless they were previously presented to the trial court. It is only in rare cases in which the record allows a reviewing court to fairly evaluate the merits of the claim that we will consider such a claim." *United States v. Isgar*, 739 F.3d 829, 841 (5th Cir.

2014) (internal quotation marks and footnotes omitted). We conclude that this is not such a "rare" case, so we offer no opinion on whether such a claim would be successful on collateral review. We concur with counsel's remaining assessment that the appeal presents no nonfrivolous issue for direct 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. Sayasane's pro se motion for appointment of new counsel is DENIED as untimely. See *United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998). 2