

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 9, 2009

No. 07-50951
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

GRACIELO GARDEA-CARRASCO

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:00-CR-141-4

Before WIENER, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Gracielo Gardea-Carrasco has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Gardea-Carrasco has filed a motion for appointment of counsel, and his motion challenges his sentence and the alleged ineffective assistance of counsel in connection with his sentencing proceeding. The record is insufficiently developed to allow consideration at this time of

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Gardea-Carrasco's claims of ineffective assistance of counsel; such claims generally "cannot be resolved on direct appeal when [they have] not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations." *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted).

Our independent review of the record, counsel's brief, and Gardea-Carrasco's motion discloses no nonfrivolous issue for appeal. 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. Gardea-Carrasco's motion for appointment of counsel is DENIED. The record does reveal a clerical error in the judgment. *See* FED. R. CRIM. P. 36. The written judgment reflects that Gardea-Carrasco was convicted of conspiring to possess with intent to distribute marijuana in excess of 1,000 kilograms. Gardea-Carrasco pleaded guilty, however, to conspiring to possess with intent to distribute marijuana in excess of only 100 kilograms. This matter is REMANDED for correction of the clerical error pursuant to FED. R. CRIM. P. 36.