

United States Court of Appeals for the Fifth Circuit

No. 22-10005
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 18, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL VANOUS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:21-CR-61-1

Before JOLLY, JONES, and HO, *Circuit Judges*.

PER CURIAM:*

The Federal Public Defender appointed to represent Michael Vanous 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). Counsel attempted to mail a copy of his *Anders* brief to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Vanous as well, but it's not clear from the record if counsel mailed it to the correct address. Counsel sent the brief to Vanous's address of record, a facility in Texas. But at some unknown point, Vanous was transferred to an institution in Oklahoma. Upon learning of the change in address, the Clerk's Office wrote Vanous and notified him that his attorney had filed an *Anders* motion and that he could respond to it. Vanous filed a response (1) alleging that he received ineffective assistance of counsel at the district court, (2) stating that he never received his attorney's *Anders* brief, and (3) requesting to proceed *pro se* and that counsel produce evidence and documents.

We have reviewed counsel's brief and the relevant portions of the record. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. Since Vanous may not have received counsel's brief, we look to his response as well to determine if there are nonfrivolous issues.

Vanous's response does not change our conclusion. The only issues he raises are ineffective assistance of counsel claims, which are generally inappropriate on direct appeal unless the record is sufficiently developed regarding counsel's conduct and motivations. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014). Here, the record is not so developed. Thus, we decline to consider his ineffective assistance claims without prejudice to his right to pursue relief on collateral review. Furthermore, we deny his request to proceed *pro se* as untimely. *See United States v. Wagner*, 158 F.3d 901, 902–03 (5th Cir. 1998).

Accordingly, counsel's motion for leave to withdraw is GRANTED and counsel is excused from further responsibilities herein. Vanous's requests for documents and to proceed *pro se* are DENIED and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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NEW ORLEANS, LA 70130

October 18, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-10005 USA v. Vanous
USDC No. 5:21-CR-61-1

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Casey A. Sullivan, Deputy Clerk

Enclosure(s)

Mr. Adam Nicholson
Ms. Leigha Amy Simonton
Mr. Michael Vanous