

MAR 27 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>MICHAEL SEAN KELLY,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 07-50428

D.C. No. CR-06-00226-DOC-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Michael Sean Kelly appeals from his guilty-plea conviction and 70-month sentence for bank robbery, in violation of 18 U.S.C. § 2113(a). Pursuant to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Anders v. California, 386 U.S. 738 (1967), Kelly's counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided the appellant with the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Kelly waived his right to appeal his sentence with the exception of the district court's determination of certain conditions of supervised release. Our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 80-81 (1988), indicates that the appeal waiver is operative. Accordingly, we dismiss the appeal in part. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

With regard to Kelly's conviction and the conditions of supervised release from which he retained the right to appeal, our independent review of the record discloses no arguable grounds for relief on direct appeal, and we affirm.

Counsel's motion to withdraw is **GRANTED**.

AFFIRMED in part; DISMISSED in part.