

AUG 17 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERTO CRUZ GAXIOLA-
VALENZUELA,

Defendant - Appellant.

No. 08-10187

D.C. No. 2:07-cr-00261-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Roberto Cruz Gaxiola-Valenzuela appeals from his guilty-plea conviction and 51-month sentence for aiding and abetting possession with intent to distribute

* 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).

five kilograms or more of cocaine, in violation of 21 U.S.C. § 841(a)(1), and 18 U.S.C. § 2. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Gaxiola-Valenzuela'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.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief on direct appeal.

Accordingly, counsel's motion to withdraw is **GRANTED**, and the district court's judgment is **AFFIRMED**.