

JAN 25 2010

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NOT FOR PUBLICATION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.

DAVID SIMCHO,

Defendant - Appellant.

No. 09-10131

D.C. No. 3:06-CR-00542-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

David Simcho appeals from his guilty-plea conviction and two concurrent 27-month sentences for aiding or assisting in the preparation of false tax returns, in

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

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

violation of 26 U.S.C. § 7206(2), and tax evasion, in violation of 26 U.S.C. § 7201. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Simcho'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**. However, we **REMAND** sua sponte for the limited purpose of considering whether the judgment is consistent with the district court's oral pronouncement regarding special condition of supervised release # 1. *See, e.g., United States v. Hicks*, 997 F.2d 594, 597 (9th Cir. 1993).