

JUN 15 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NOT FOR PUBLICATION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.

RAFAEL GAMARRO-RAMIREZ,

Defendant - Appellant.

No. 09-50379

D.C. No. 5:08-cr-00214-VAP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Rafael Gamarro-Ramirez appeals from the conviction and 46-month sentence imposed following his guilty plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326(a). Pursuant to *Anders v. California*, 386 U.S. 738

* 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).

(1967), Gamarro-Ramirez's counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. Appellant has filed a pro se brief.¹

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.

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir.2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir.2000) (remanding sua sponte to delete the reference to § 1326(b)).

Counsel's motion to withdraw is **GRANTED**, and the district court's judgment is **AFFIRMED**, and the case is **REMANDED** with instructions to correct the judgment.

¹ Appellant's motion to file a late opening brief is granted, and the brief received on April 15, 2010, is deemed filed.