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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ROBERT MATHIS McCREERY, Jr.,</p> <p>Defendant - Appellant.</p>

No. 09-30163

D.C. No. 4:08-CR-00091-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Robert Mathis McCreery, Jr., appeals from his guilty-plea conviction and 240-month sentence for conspiracy to possess/distribute a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and tampering with a witness, in violation of 18 U.S.C. § 1512(a)(2)(A). Pursuant to *Anders v. California*, 386 U.S.

* 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).

738 (1967), McCreery'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. We construe the letter dated November 4, 2010, as a pro se supplemental brief.

To the extent McCreery requests appointment of new counsel, we deny the request. We also deny McCreery's motion requesting leave to provide additional pro se supplemental briefing.

Our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief on direct appeal. We decline to rule on McCreery's claim of ineffective assistance of counsel on direct appeal. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003). We dismiss in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

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

DISMISSED.