

APR 11 2011

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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NOT FOR PUBLICATION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>VICTOR ANDRADE CASTILLO,</p> <p>Defendant - Appellant.</p>
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No. 08-50452

D.C. No. 3:07-cr-02597-JAH

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
John A. Houston, District Judge, Presiding

Submitted April 5, 2011\*\*

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Victor Andrade Castillo appeals from the 36-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Castillo’s counsel has filed a brief stating there are no grounds for

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\* 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).

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.

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 8 U.S.C. § 1326(b). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to section 1326(b)).

Upon remand, the district court should strike the portion of the special condition of supervision which requires Castillo to “report to the probation officer with[in] 24 hours of any reentry to the United States” because this requirement was included in the written judgment but not imposed at sentencing. *See United States v. Napier*, 463 F.3d 1040, 1042 (9th Cir. 2006); *see also United States v. Hicks*, 997 F.2d 594, 597 (9th Cir. 1993).

Counsel’s request for oral argument is denied, the motion to withdraw is **GRANTED**, and the district court’s judgment is **AFFIRMED**.

**AFFIRMED; REMANDED to correct the judgment.**