

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APR 11 2011

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERARDO GARCIA-ANTONIO,

Defendant - Appellant.

No. 09-10084

D.C. No. 2:08-CR-01208-MHM
District of Arizona,
Phoenix

ORDER

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

Counsel for appellant has filed a brief stating that he finds no meritorious issues for review and a motion to withdraw as counsel of record pursuant to *Anders v. California*, 386 U.S. 738 (1967). No pro se supplemental brief or answering brief has been filed.

Our independent review of the record, *see Penson v. Ohio*, 488 U.S. 75, 83-84 (1988), discloses the following potentially arguable issue for direct appeal: Does Garcia-Antonio's prior conviction under California Penal Code section 288(c) qualify as a crime of violence warranting a sixteen-level increase under U.S.S.G. § 2L1.2(b)(1)(A)(ii)? *See United States v. Castro*, 607 F.3d 566, 567 (9th Cir. 2010), which was filed after briefing was completed.

Counsel's motion to withdraw is denied.

_____The *Anders* brief filed December 21, 2009 is stricken. Counsel may brief any issues deemed appropriate, but in particular shall address the issue identified above. Appellant's replacement opening brief and any supplement to the excerpts of record filed December 23, 2009 are due June 6, 2011; appellee's brief is due July 6, 2011; the optional reply brief is due within 14 days after service of appellee's brief.

The clerk shall serve a copy of this order on appellant personally, as well as on appellee James Knapp, Assistant U.S. Attorney, U.S. Attorney's Office, Two Renaissance Square, 40 N. Central Ave. Ste. 1200, Phoenix, Arizona 85004-4408.

This panel does not retain jurisdiction over the appeal.