

OCT 03 2011

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NOT FOR PUBLICATION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.

JOSE ANGEL GALAVIZ, a.k.a. Jose Galaviz,

Defendant - Appellant.

No. 10-50319

D.C. No. 2:09-cr-00595-AG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Jose Angel Galaviz appeals from his guilty-plea conviction and 37-month sentence for being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326. 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), Galaviz'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.

Galaviz waived his right to appeal his sentence with the exception of the court's calculation of his criminal history category. Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief as to the defendant's conviction and indicates that the appeal waiver is operative. Accordingly, we dismiss the appeal of the sentence in part. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000). With regard to the court's calculation of the criminal history category, our independent review of the record discloses no arguable grounds for relief on direct appeal, and we affirm.

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 § 1326(b)).

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

AFFIRMED in part; **DISMISSED** in part; **REMANDED** to correct the judgment.