

OCT 28 2011

MOLLY C. DWYER, CLERK
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NOT FOR PUBLICATION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>JOSE LUIS RUBIO-RODRIGUEZ,</p> <p>Defendant - Appellant.</p>

No. 10-10529

D.C. No. 2:09-cr-00262-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Jose Luis Rubio-Rodriguez appeals from his guilty-plea conviction and 135-month sentence for conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii) and 846. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Rubio-Rodriguez’s counsel has filed a brief stating there are

* 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).

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.

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. We dismiss in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

We remand to the district court to correct what may be a clerical error in the judgment. The judgment may be amended to reflect that defendant was convicted of conspiracy to distribute methamphetamine in violation of “21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii) and 846.”

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

DISMISSED; REMANDED to correct the judgment.