

DEC 23 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NOT FOR PUBLICATION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>CARLOS ALBERTO POLINO,</p> <p>Defendant - Appellant.</p>

No. 10-10578

D.C. No. 2:10-cr-00078-HDM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Carlos Alberto Polino appeals from his guilty-plea conviction and 57-month sentence imposed for being a deported alien found unlawfully in the United States, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Polino’s counsel has filed a brief stating there are no grounds

* 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).

for relief, along with a motion to withdraw as counsel of record. We have provided Polino the opportunity to file a pro se supplemental brief. A pro se supplemental brief has been filed. No answering brief has been filed.

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 remand the case to the district court with instructions that it strike the supervised release special condition which prohibits Polino from possessing a firearm or any other dangerous weapon because this condition 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 motion to withdraw is **GRANTED**, and the district court's judgment is **AFFIRMED**.

AFFIRMED; REMANDED to correct the judgment.