

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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>JOHN ANTHONY GOMEZ,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 10-50599

D.C. No. 3:10-cr-02409-JAH

MEMORANDUM*

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

Submitted December 19, 2011**

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

John Anthony Gomez appeals from his guilty-plea convictions and 120-month sentence for importation of marijuana and methamphetamine and aiding and abetting in violation of 21 U.S.C. §§ 952 and 960 and 18 U.S.C. § 2. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Gomez’s counsel has filed a brief

* 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).

stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided Gomez with the opportunity to file a pro se supplemental brief. No pro se supplemental brief has been filed. Appellee has filed a motion to dismiss.

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).

However, the judgment does not conform to the oral pronouncement at sentencing because it includes a non-standard condition of supervised release which the district court did not include in the oral pronouncement. Because an unambiguous oral pronouncement of sentence controls over a written judgment, *see United States v. Hicks*, 997 F.2d 594, 597 (9th Cir. 1993), we remand for the limited purpose of correcting the clerical error. *See Fed. R. Crim. P. 36.*

Counsel's motion to withdraw is **GRANTED**. Appellee's motion to dismiss is **DENIED AS MOOT**.

DISMISSED; REMANDED.