

JUL 19 2012

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NOT FOR PUBLICATION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.

FRANCISCO FERNANDO CHAVEZ
VALDEZ, aka Francisco Chavez, aka Jose
Medina Lopez, aka Francisco Valdez,

Defendant - Appellant.

No. 11-50034

D.C. No. 2:09-cr-00796-DSF-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS and SILVERMAN, Circuit Judges.

Francisco Fernando Chavez Valdez appeals from his guilty-plea conviction and 46-month sentence for being an illegal alien found in the United States after having been previously removed, in violation of 8 U.S.C. § 1326(a). Pursuant to

* 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).

Anders v. California, 386 U.S. 738 (1967), Valdez's counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. Valdez has filed a pro se supplemental brief.

With regard to Valdez's conviction and criminal history, from which he retained the right to appeal, our independent review of the record discloses no arguable grounds for relief, and we affirm.

Valdez waived his right to appeal his sentence with the exception of the calculation of his criminal history category. Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), indicates that the appeal waiver is operative. Accordingly, we dismiss the appeal in part. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

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

AFFIRMED in part; DISMISSED in part.