

APR 23 2013

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NOT FOR PUBLICATION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.

GABRIEL DIAZ, a.k.a. Eightball, a.k.a.
Ocho,

Defendant - Appellant.

No. 12-50117

D.C. No. 2:10-cr-00215-PSG

MEMORANDUM*

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

Submitted April 16, 2013**

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Gabriel Diaz appeals from the district court’s judgment and challenges his guilty-plea conviction and 240-month sentence for possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii);

* 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).

and use or carrying of a firearm during a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Diaz’s counsel has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided Diaz the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Diaz waived his right to appeal his conviction, with the exception of an appeal based on a claim that his plea was involuntary. He also waived the right to appeal five specified issues related to his sentence. Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable grounds for relief as to Diaz’s plea or any sentencing issue outside the scope of the appeal waiver. We therefore affirm as to those issues. We dismiss the remainder of the appeal in light of the valid appeal waivers. *See United States v. Watson*, 582 F.3d 974, 988 (9th Cir. 2009).

We remand to the district court with instructions to amend the judgment to delete “Cocaine, Cocaine Base in the Form of Crack Cocaine,” and replace it with “methamphetamine.”

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

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