

JAN 23 2014

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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NOT FOR PUBLICATION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>v.</p> <p>MICHAEL RAY KAPP, a.k.a. Michael Kapp,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 12-10626

D.C. No. 2:11-cr-00739-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James G. Carr, District Judge, Presiding**

Submitted January 21, 2014***

Before: CANBY, SILVERMAN, and PAEZ, Circuit Judges.

Michael Ray Kapp appeals from the district court’s judgment and challenges his guilty-plea conviction and 210-month sentence for possession with intent to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable James G. Carr, Senior United States District Judge for the Northern District of Ohio, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii); and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Kapp'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 Kapp the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Kapp has waived his right to appeal his conviction and sentence. Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable issue as to the validity of the waiver. *See United States v. Watson*, 582 F.3d 974, 986-88 (9th Cir. 2009). We accordingly dismiss the appeal. *See id.* at 988.

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

Kapp's pro se motion to seal this appeal is **DENIED**. The motion, the *Anders* brief, and the excerpts of record shall remain under seal.

DISMISSED.