

MAR 13 2014

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NOT FOR PUBLICATION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.

VICTOR YOVANNY AVILA PAYAN,  
a.k.a. Victor Avila,

Defendant - Appellant.

No. 13-50159

D.C. No. 2:13-cr-00060-RGK

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Submitted March 10, 2014\*\*

Before: PREGERSON, LEAVY, and MURGUIA, Circuit Judges.

Victor Yovanny Avila Payan appeals from the district court's judgment and challenges his guilty-plea conviction and the 27-month sentence imposed for being an illegal alien found in the United States following deportation, in violation of 8

---

\* 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).

U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Avila Payan'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 Avila Payan the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Avila Payan 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 his sentence, except as to the district court's determination of his criminal history category. 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 either the validity of the plea or the criminal history category calculated by the court. We, therefore, affirm as to those issues. We dismiss the remainder of the appeal in light of the valid appeal waiver. *See United States v. Watson*, 582 F.3d 974, 988 (9th Cir. 2009).

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

**AFFIRMED in part; DISMISSED in part.**