

MAY 20 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NOT FOR PUBLICATION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.

FRED BURLING HOVEY, III,

Defendant - Appellant.

No. 13-50128

D.C. No. 3:12-cr-00624-IEG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted May 13, 2014**

Before: CLIFTON, BEA, and WATFORD, Circuit Judges.

Fred Hovey appeals from the district court's judgment and challenges his guilty-plea conviction and the 120-month sentence for importation of heroin, in violation of 21 U.S.C. §§ 952 and 960. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Hovey's counsel has filed a brief stating that there are no grounds for

* 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).

relief, along with a motion to withdraw as counsel of record. Hovey has filed a pro se supplemental brief. The government has filed a motion to dismiss the appeal on the basis of the appellate waiver in the parties' plea agreement and has advised the court that it does not intend to file an answering brief.

Hovey has waived the 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, grant the government's motion and dismiss the appeal. *See id.* at 988.

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

DISMISSED.