

MAR 16 2015

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NOT FOR PUBLICATION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.

JOSE EDUVIGUES RODRIGUEZ DIAZ,
a.k.a. Jesus Martinez Diaz, a.k.a. Jesus
Manuel Rodriguez Diaz, a.k.a. Jose
Rodriguez, a.k.a. Fernando Quinones
Silva,

Defendant - Appellant.

No. 14-50159

D.C. No. 8:13-cr-00154-JVS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted March 10, 2015**

Before: FARRIS, WARDLAW, and PAEZ, Circuit Judges.

Jose Eduvigues Rodriguez Diaz appeals from the district court's judgment and challenges his guilty-plea conviction and 30-month sentence for being an

* 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).

illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Rodriguez 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. Rodriguez Diaz has filed a pro se supplemental brief. The government has filed an answering brief.

Rodriguez Diaz waived his right to appeal his conviction, with the exception of an appeal based on a claim that his guilty plea was involuntary. He also waived the right to appeal his sentence, with the exception of the court’s calculation 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 the voluntariness of Rodriguez Diaz’s 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).

We decline to review Rodriguez Diaz’s pro se ineffective assistance of counsel claim on direct appeal because this is not one of the “unusual cases where (1) the record on appeal is sufficiently developed to permit determination of the issue, or (2) the legal representation is so inadequate that it obviously denies a

defendant his Sixth Amendment right to counsel.” *United States v. Rahman*, 642 F.3d 1257, 1260 (9th Cir. 2011).

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

Rodriguez Diaz’s motion for appointment of new counsel is **DENIED**.

AFFIRMED in part; DISMISSED in part.