

MAY 19 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NOT FOR PUBLICATION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.

SALVADOR NIETO-GONZALEZ,

Defendant - Appellant.

No. 14-10317

D.C. No. 4:13-cr-01999-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Mark W. Bennett, District Judge, Presiding**

Submitted May 13, 2015***

Before: LEAVY, CALLAHAN, and M. SMITH, Circuit Judges.

Salvador Nieto-Gonzalez appeals from the district court's judgment and

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

** The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa, sitting by designation.

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

challenges his guilty-plea conviction and 57-month sentence for reentry after deportation, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Nieto-Gonzalez'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 Nieto-Gonzalez the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses that following the change of plea hearing, the magistrate judge did not submit findings and recommendations, and the district court did not accept Nieto-Gonzalez's guilty plea. *See* 28 U.S.C. § 636(b)(1)(C); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Accordingly, we vacate the judgment of conviction and remand to the district court for further proceedings consistent with this disposition.

Counsel's motion to withdraw is **GRANTED**. All other pending motions are denied as moot. Upon remand, the district court shall appoint new counsel for Nieto-Gonzalez.

VACATED and REMANDED.