

JUL 28 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NOT FOR PUBLICATION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.

MARK JOSEPH BOTTA,

Defendant - Appellant.

No. 13-50539

D.C. No. 2:11-cr-01181-DMG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Mark Joseph Botta appeals from the district court's judgment and challenges his guilty-plea conviction and 24-month sentence for wire fraud and aiding and abetting, in violation of 18 U.S.C. §§ 2(a) and 1343. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Botta's counsel has filed a brief stating that there

* 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).

are no grounds for relief, along with a motion to withdraw as counsel of record.

We have provided Botta the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Botta waived his right to appeal his conviction, with the exception of an appeal based on a claim that his plea was involuntary. Botta also waived the right to appeal six specified issues related to his sentence. 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 Botta's plea or any sentencing issue outside the scope of the appeal waiver, including the restitution award. 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.