

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 18 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGEL FERNANDO BARAJAS-
AGUILAR,

Defendant - Appellant.

No. 15-10386

D.C. No. 4:14-cr-01990-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted April 13, 2016**

Before: FARRIS, TALLMAN, and BYBEE, Circuit Judges.

Angel Fernando Barajas-Aguilar appeals from the district court's judgment and challenges his guilty-plea conviction and 24-month sentence for possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) and

* 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).

(b)(1)(D). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Barajas-Aguilar'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 Barajas-Aguilar the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Barajas-Aguilar waived his right to appeal his conviction. Our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable grounds for relief as to the validity of the waiver. See *United States v. Watson*, 582 F.3d 974, 986-88 (9th Cir. 2009). We accordingly dismiss Barajas-Aguilar's appeal of his conviction. See *id.* at 988.

Barajas-Aguilar also waived the right to appeal his sentence. However, we decline to enforce the sentencing appeal waiver because the district court failed to discuss it, or to confirm that Barajas-Aguilar understood its terms, at the change of plea hearing. See Fed. R. Crim. P. 11(b)(1)(N); *United States v. Arellano-Gallegos*, 387 F.3d 794, 796-97 (9th Cir. 2004). Because we find no arguable issues as to Barajas-Aguilar's sentence, we affirm his sentence.

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

DISMISSED in part; AFFIRMED in part.