

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 13 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-10207

Plaintiff-Appellee,

D.C. No. 2:15-cr-00124-KJM

v.

MEMORANDUM*

EPATI MALAUULU,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted April 11, 2018**

Before: SILVERMAN, PAEZ, and OWENS, Circuit Judges.

Epati Malauulu appeals from the district court's judgment and challenges his guilty-plea conviction and 240-month sentence for conspiracy to distribute and possess with intent to distribute at least 500 grams of a mixture and substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

§§ 841(a)(1) and 846. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Malauulu’s counsel has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. Malauulu has filed a “Supplemental Brief for Appointment of Counsel,” which we treat as a pro se supplemental opening brief. No answering brief has been filed.

Malauulu waived his 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 dismiss the appeal. *See id.* at 988.

To the extent that the forfeiture order falls outside the scope of the waiver, we affirm as to that issue.

We decline to address on direct appeal Malauulu’s pro se claim of ineffective assistance of counsel. *See United States v. Rahman*, 642 F.3d 1257, 1260 (9th Cir. 2011).

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

Malauulu’s request for appointment of new counsel is **DENIED**.

AFFIRMED in part; DISMISSED in part.