

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 18 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-30098

Plaintiff-Appellee,

D.C. No. 2:17-cr-00286-JLR

v.

MEMORANDUM*

MARTIN GARCIA-GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted January 15, 2019**

Before: TROTT, TALLMAN, and CALLAHAN, Circuit Judges.

Martin Garcia-Gonzalez appeals from the district court's judgment and challenges his guilty-plea conviction and 20-month sentence for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Garcia-Gonzalez's counsel has filed a brief

* 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).

stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided Garcia-Gonzalez the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Garcia-Gonzalez 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.

We decline to address on direct appeal Garcia-Gonzalez's claim of ineffective assistance of counsel. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions to correct the judgment to exclude the reference to 8 U.S.C. § 1326(b)(1). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete from judgment reference to section 1326(b)).

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

DISMISSED; REMANDED to correct the judgment.