

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 7 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GABRIEL RODRIGUEZ-RODRIGUEZ,

Defendant-Appellant.

No. 19-50216

D.C. No. 3:16-cr-00374-W-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted February 4, 2020**

Before: FERNANDEZ, SILVERMAN, and TALLMAN, Circuit Judges.

Gabriel Rodriguez-Rodriguez appeals from the district court's judgment and challenges his guilty-plea conviction and 37-month sentence for being a removed alien found in the United States, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Rodriguez-Rodriguez's counsel has

* 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).

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

Rodriguez-Rodriguez entered into a plea agreement that contained an appeal waiver. We decline to enforce the waiver, however, because the district court failed to advise Rodriguez-Rodriguez of the waiver during the change-of-plea hearing, in violation of Federal Rule of Criminal Procedure 11(b)(1)(N). *See United States v. Arellano-Gallegos*, 387 F.3d 794, 797 (9th Cir. 2004).

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable grounds for relief on direct appeal.

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

AFFIRMED.