

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 21 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-50161

Plaintiff-Appellee,

D.C. No. 3:20-cr-00879-JLS-1

v.

MEMORANDUM*

MICHAEL JAMES VAN NIEKERK,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted April 11, 2022**

Before: McKEOWN, CHRISTEN, and BRESS, Circuit Judges.

Michael James Van Niekerk appeals from the district court's judgment and challenges the 76-month sentence imposed following his guilty-plea conviction for importation of methamphetamine, in violation of 21 U.S.C. §§ 952 and 960.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Van Niekerk'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 Van Niekerk the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

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.

We remand, however, solely for the district court to strike from the written judgment special condition 2, which was not orally pronounced. *See United States v. Hernandez*, 795 F.3d 1159, 1169 (9th Cir. 2015).

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

AFFIRMED; REMANDED to correct the judgment.