

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 25 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE ROSARIO SEGURA
BALENTIERRA,

Defendant-Appellant.

No. 21-50235

D.C. No. 3:20-cr-02671-LAB-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted January 18, 2023**

Before: GRABER, PAEZ, and NGUYEN, Circuit Judges.

Jose Rosario Segura Balentierra appeals from the district court's judgment and challenges his guilty-plea convictions and concurrent 182-month sentences for possession of cocaine with intent to distribute on board a vessel, in violation of 46 U.S.C. § 70503; operation of a semi-submersible vessel without nationality, in

* 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).

violation of 18 U.S.C. § 2285; and aiding and abetting these offenses, in violation of 18 U.S.C. § 2. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Segura Balentierra'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 treat Segura Balentierra's letter dated November 2, 2022, as his pro se supplemental brief. The government has not filed an answering brief.

Segura Balentierra 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, except as to the custodial sentence and supervised release term imposed on count four, which exceeds the statutory maximum of 15 years and 3 years, respectively. *See* 18 U.S.C. §§ 2285, 3583(b)(2); *see also Watson*, 582 F.3d at 977 (appeal waiver does not bar challenge to an illegal sentence). We vacate that portion of the judgment and remand solely for the district court to reduce to no more than 15 years and 3 years, respectively, the custodial sentence and supervised release term imposed on count four.

We deny Segura Balentierra's pro se request for substitution of counsel and decline to address on direct appeal his pro se claims of ineffective assistance of counsel. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011)

(ineffective assistance of counsel claims are reviewed on direct appeal only where the record is sufficiently developed or the legal representation is so obviously inadequate that it denies a defendant his Sixth Amendment right to counsel).

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

DISMISSED in part; VACATED in part; REMANDED with instructions.