

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 5 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10287

Plaintiff-Appellee,

D.C. No. 3:19-cr-08077-SPL-1

v.

MEMORANDUM*

EDISON GICELA TORTICE, AKA Edison
Tortice,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
Steven P. Logan, District Judge, Presiding

Submitted April 17, 2023**

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

Edison Gicela Tortice appeals from the district court's judgment and challenges his guilty-plea conviction and 293-month sentence for abusive sexual contact of a child, in violation of 18 U.S.C. §§ 1153, 2244(a)(5), and 2246.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Tortice's counsel has filed

* 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).

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

Tortice 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 Special Conditions 1 and 5, which we vacate and remand. *See United States v. Nishida*, 53 F.4th 1144, 1151-55 (9th Cir. 2022); *see also Watson*, 582 F.3d at 977 (an appeal waiver does not bar a constitutional challenge to a supervised release condition). On remand, the district court must reevaluate Special Conditions 1 and 5 in light of *Nishida* and the post-*Nishida* changes made in the District of Arizona to these special conditions.

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

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