

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 4 2024

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAWANE ARTHUR MALLETT,

Defendant - Appellant.

No. 23-418

D.C. No. 2:02-cr-00416-TLN-AC-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted February 21, 2024**

Before: FERNANDEZ, NGUYEN, and OWENS, Circuit Judges.

Dawane Arthur Mallett appeals from the district court's amended judgment imposing a reduced sentence of 294 months following the court's order granting Mallett's 28 U.S.C. § 2255 motion and vacating Mallett's two 18 U.S.C. § 924(c) convictions. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Mallett's

* 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).

counsel has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. Mallett has filed two pro se supplemental briefs, and the government has filed an answering brief, to which Mallett filed a reply.

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. The district court did not abuse its discretion in correcting the sentence only as to the vacated § 924(c) counts and declining to conduct a full resentencing on the remaining counts. *See Troiano v. United States*, 918 F.3d 1082, 1086-88 (9th Cir. 2019). Mallett's pro se challenges to the corrected sentence are without merit, and his challenges to his other counts of conviction are beyond the scope of this appeal.

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

AFFIRMED.