

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4490

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERNANDO GARCIA, a/k/a Jose Garcia-Hernandez,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:08-cr-00243-TDS-1)

Submitted: July 1, 2010

Decided: July 15, 2010

Before DUNCAN, AGEE, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James E. Quander, Jr., QUANDER & RUBAIN, P.A., Winston-Salem, North Carolina, for Appellant. Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Fernando Garcia pled guilty to one count of illegal reentry by a previously deported alien who had been convicted of an aggravated felony, in violation of 8 U.S.C. § 1326(a), (b)(2) (2006). He was sentenced to sixty months' imprisonment. His counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), certifying there are no meritorious arguments for appeal. Garcia did not file a pro se supplemental brief and the Government did not file a response brief. We affirm.

We hold, based on our review of the Rule 11 hearing, that Garcia's guilty plea was knowing and voluntary. Thus, we affirm the conviction. We have also reviewed the presentence investigation report and the sentencing transcript, including counsel's argument for a below-Guidelines sentence, and hold that there was no procedural or substantive error in the district court's decision to impose a within-Guidelines sentence.

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm Garcia's conviction and sentence. This court requires that counsel inform Garcia, in writing, of his right to petition the Supreme Court of the United States for further review. If Garcia requests a petition be filed, but counsel believes that such a petition would be frivolous,

counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Garcia. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED