

DEC 06 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>KEVIN KENNETH GAETHLE,</p> <p>Defendant - Appellant.</p>

No. 12-30361

D.C. No. 9:12-cr-00017-DLC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, Chief Judge, Presiding

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

Kevin Kenneth Gaethle appeals from the district court’s judgment and challenges his guilty-plea conviction and 51-month sentence for robbery affecting commerce, in violation of 18 U.S.C. §§ 1951(a) and 2. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Gaethle’s counsel has filed a brief stating that

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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

Gaethle waived his right to appeal the reasonableness of his sentence and the conditions of his term of supervised release as long as his sentence was within or below the Guidelines range calculated by the district court. Because Gaethle's sentence satisfies this condition, and the record discloses no arguable issue as to the validity of the waiver, we dismiss the appeal to the extent it challenges the reasonableness of his sentence and the supervised release conditions imposed by the court. *See United States v. Watson*, 582 F.3d 974, 988 (9th Cir. 2009). As to the remainder of the appeal, 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.

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

AFFIRMED in part; DISMISSED in part.