

APR 27 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN JOSE NEGRETE-DOMINGUEZ,

Defendant - Appellant.

No. 13-10191

D.C. No. 4:12-cr-01953-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Jack Zouhary, District Judge, Presiding**

Submitted April 22, 2015***

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

Juan Jose Negrete-Dominguez appeals from the district court judgment and challenges his guilty-plea conviction and 57-month sentence for attempted reentry

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

** The Honorable Jack Zouhary, United States District Judge for the Northern District of Ohio, sitting by designation.

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

after deportation, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Negrete-Dominguez's counsel has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. Negrete-Dominguez has filed a pro se supplemental brief and the government has filed an answering brief.

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 with respect to the conviction. We, therefore, affirm Negrete-Dominguez's conviction.

With respect to Negrete-Dominguez's sentence, in light of the November 2013 amendment to U.S.S.G. § 3E1.1, the government concedes that Negrete-Dominguez's sentence should be vacated and the case remanded for the district court to consider whether Negrete-Dominguez should receive a third-level reduction for acceptance of responsibility. Accordingly, we vacate and remand for resentencing.

Because it will be relevant on remand, we address Negrete-Dominguez's argument that the district court erred in imposing a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii). Negrete-Dominguez contends that he should not have received the enhancement for his California conviction for aggravated assault with a deadly weapon because the conviction was obtained through a plea of nolo contendere. This contention is unavailing because a no contest plea serves as the

equivalent of a guilty plea for the purposes of determining whether the crime of conviction is a crime of violence. *See United States v. Guerrero-Velasquez*, 434 F.3d 1193, 1197-98 (9th Cir. 2006).

Counsel's motion to withdraw is denied without prejudice to renewal in the district court if counsel does not wish to represent Negrete-Dominguez at his resentencing. Counsel's request for advisement of case status is denied as unnecessary.

AFFIRMED in part; SENTENCE VACATED and REMANDED for RESENTENCING.