

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4811

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAIME CALLEJAS-URIBE,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. Glen E. Conrad, District Judge. (5:05-cr-00061-gec-bwc-3)

Submitted: December 23, 2009

Decided: January 7, 2010

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Larry W. Shelton, Federal Public Defender, Allegra M.C. Black, Assistant Federal Public Defender, Christine Madeleine Spurell, Research and Writing Attorney, Roanoke, Virginia, for Appellant. Jean Barrett Hudson, Assistant United States Attorney, Charlottesville, Virginia; Ryan Lee Souders, Jeb Thomas Terrien, Assistant United States Attorneys, Harrisonburg, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Without a plea agreement, Jaime Callejas-Uribe pled guilty to conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine hydrochloride, in violation of 21 U.S.C. §§ 841(a)(1), 846 (2006). The district court sentenced him to ninety-six months in prison. Callejas-Uribe appeals.

Counsel filed an Anders¹ brief, finding no meritorious grounds for appeal, but questioning whether the district court erred by imposing an upward variance sentence without giving Callejas-Uribe notice of its intention to do so. However, the Supreme Court has held that an upward variance does not require notice under Fed. R. Crim. P. 32(h). Irizarry v. United States, 128 S. Ct. 2198 (2008).

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal.² We therefore affirm Callejas-Uribe's conviction and sentence. This court requires that counsel inform Callejas-Uribe, in writing, of the right to petition the Supreme Court of the United States for further review. If Callejas-Uribe requests

¹ Anders v. California, 386 U.S. 738 (1967).

² Callejas-Uribe was advised of his right to file a pro se supplemental brief, but he did not file one.

that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Callejas-Uribe.

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