

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4219

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

IRVING E. RODRIGUEZ-MUNGUIA,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina,
at Statesville. Richard L. Voorhees, Senior District Judge. (5:15-cr-00077-RLV-DCK-2)

Submitted: November 7, 2017

Decided: November 27, 2017

Before WYNN, FLOYD, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Randolph M. Lee, Charlotte, North Carolina, for Appellant. Amy Elizabeth Ray,
Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Irving E. Rodriguez-Munguia pled guilty, pursuant to a plea agreement, to conspiracy to distribute and possess with the intent to distribute more than 500 grams of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 846 (2012). On appeal, counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal but questioning whether plea counsel was ineffective. Rodriguez-Munguia was notified of his right to file a pro se brief but has not done so. We affirm.

Rodriguez-Munguia's claim of ineffective assistance of counsel is only cognizable on direct appeal if it conclusively appears on the record that counsel was ineffective. *United States v. Galloway*, 749 F.3d 238, 241 (4th Cir. 2014). To succeed on a claim of ineffective assistance of counsel, Rodriguez-Munguia must show that: (1) "counsel's representation fell below an objective standard of reasonableness, *Strickland v. Washington*, 466 U.S. 668, 688 (1984); and (2) "the deficient performance prejudiced the defense," *id.* at 687. The record before us does not conclusively establish ineffective assistance of counsel, and Rodriguez-Munguia's claim therefore should be raised, if at all, in a 28 U.S.C. § 2255 (2012) motion. *See United States v. Faulk*, 821 F.3d 502, 508 (4th Cir. 2016).

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious grounds for appeal. We therefore affirm the district court's judgment. This court requires that counsel inform Rodriguez-Munguia, in writing, of the right to petition the Supreme Court of the United States for further review. If

Rodriguez-Munguia requests 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 Rodriguez-Munguia.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED