

APR 25 2012

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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NOT FOR PUBLICATION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>XAVIER FRANKLIN, a.k.a. Zaybo,</p> <p>Defendant - Appellant.</p>

No. 10-50616

D.C. No. 2:08-cr-00559-VBF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Xavier Franklin appeals from his guilty-plea conviction and 240-month sentence for distribution of cocaine base in the form of crack cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(iii). Pursuant to *Anders v.*

* 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).

California, 386 U.S. 738 (1967), Franklin’s counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record.

We have provided Franklin the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Franklin waived his right to appeal his sentence with the exception of the court’s calculation of his criminal history category and the imposition of conditions of supervised release. Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief as to Franklin’s conviction and indicates that the appeal waiver is operative.

Accordingly, we affirm Franklin’s conviction and dismiss the appeal of the sentence in part. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000). With regard to the court’s calculation of the criminal history category and its imposition of conditions of supervised release, our independent review of the record discloses no arguable grounds for relief on direct appeal, and we affirm.

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

The conviction is **AFFIRMED**, and the appeal of the sentence is **DISMISSED** in part and **AFFIRMED** in part.