

NOT FOR PUBLICATION

DEC 30 2013

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERNEST BABBINI,

Defendant - Appellant.

No. 13-10069

D.C. No. 2:11-cr-00364-PGR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, District Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Ernest Babbini appeals from the district court's judgment and challenges his guilty-plea conviction and 24-month sentence for conspiracy, in violation of 18 U.S.C. § 371. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Babbini's counsel has filed a brief stating that there are no grounds for relief, along with a

* 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).

motion to withdraw as counsel of record. Babbini filed a pro se supplemental brief. No answering brief has been filed.

Babbini has waived his right to appeal his conviction and sentence. Our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable issue as to the validity of the waiver. *See United States v. Watson*, 582 F.3d 974, 986-88 (9th Cir. 2009). We accordingly dismiss the appeal. *See id.* at 988.

We decline to address Babbini's claim of ineffective assistance of counsel on direct appeal as the record is insufficiently developed and counsel's legal representation was not so inadequate that it can be concluded at this point that Babbini obviously was denied his Sixth Amendment right to counsel. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003) ("Claims of ineffective assistance of counsel are generally inappropriate on direct appeal.").

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

DISMISSED.