

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2023

FOR THE NINTH CIRCUIT

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

DUANE THOMAS LEE,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

No. 18-16965

D.C. Nos. 3:16-cv-08138-JAT
3:05-cr-00594-JAT-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted February 14, 2023**

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

Duane Thomas Lee appeals from the district court's judgment denying his 28 U.S.C. § 2255 motion to vacate his conviction under 18 U.S.C. § 924(c)(1)(A)(iii) for discharging a firearm during the commission of a crime of violence. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Lee's counsel has

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided Lee the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses that the certified issues provide no basis for appellate relief. *See Graves v. McEwen*, 731 F.3d 876, 880-81 (9th Cir. 2013); *see also United States v. Begay*, 33 F.4th 1081, 1093-96 (9th Cir.) (en banc), *cert. denied*, 143 S. Ct. 340 (2022).

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

AFFIRMED.