

August 9, 2011

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

OSCAR GARCIA,

Defendant-Appellant.

No.11-3012

(D.C. No. 2:10-CR-20094-JWL-1)

(D. Kan.)

ORDER AND JUDGMENT*

Before **O'BRIEN, McKAY, and TYMKOVICH**, Circuit Judges.

After examining counsel's *Anders* brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore ordered submitted without oral argument.

Appellant Oscar Garcia pled guilty to illegally reentering the United States after being deported subsequent to conviction for an aggravated felony, in violation of 8 U.S.C. § 1326. The district court imposed a sentence of fifty-seven months' imprisonment, at the bottom of the applicable guideline range, and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Appellant filed a notice of appeal. On appeal, Appellant's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), explaining why counsel believes there to be no reasonable grounds for appeal. Appellant and the government were both given the opportunity to file a response to the *Anders* brief but neither did so.

After conducting "a full examination of all the proceedings," *id.* at 744, we agree with defense counsel that Appellant has no non-frivolous grounds to raise on appeal. The record reveals no valid basis on which Appellant could challenge the entry of his plea of guilty or the district court's calculation of the applicable guidelines range for his sentence, which was not objected to below. As for the substantive reasonableness of Appellant's sentence, the record reflects the district court carefully considered all of the 18 U.S.C. § 3553(a) sentencing factors and concluded that a bottom-of-the-guidelines-range sentence would be most appropriate in this case. We see no grounds in the record for Appellant to rebut the presumption of reasonableness attached to this within-guidelines sentence.

Because our thorough review of the record persuades us that Appellant can raise no meritorious issue on appeal, we **GRANT** counsel's motion to withdraw and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge