

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 28, 2012

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESUS RIOS-MENDOZA,

Defendant-Appellant.

No. 11-3159
(D.C. No. 2:09-CR-20119-JWL-14)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HARTZ, ANDERSON, and O'BRIEN**, Circuit Judges.

Without the benefit of a plea agreement, Jesus Rios-Mendoza pled guilty to one count of conspiracy to distribute and possess with intent to distribute methamphetamine and cocaine. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(ii)(II), (b)(1)(A)(viii), 846 and 18 U.S.C. § 2. Affording him a downward variance from the

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

recommended Guideline sentencing range the judge imposed a sentence of 121 months' imprisonment followed by a five-year term of supervised release.

Appointed counsel was unable to identify any reasonable grounds for appeal and, accordingly, has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) explaining why. Although invited to do so, Mr. Rios-Mendoza has not filed a substantive response;¹ nor did the government.

In his *Anders* brief, counsel identifies a single potentially appealable issue, which Mr. Rios-Mendoza previously mentioned in his notice of appeal: whether the district court had territorial jurisdiction to adjudicate his case. We agree with counsel that the district court plainly had territorial jurisdiction over the case against Mr. Rios-Mendoza. Any argument to the contrary would be patently frivolous.

When defense counsel files an *Anders* brief, we are required to conduct “a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Anders*, 386 U.S. at 744. Our independent examination failed to disclose any non-frivolous grounds for appeal.

DISMISSED.

¹ On November 7, 2011, Rios-Mendoza advised this court that he would file no response to the *Anders* brief but was working on a 28 U.S.C. § 2255 motion, which he intends to file in district court as soon as this appeal is dismissed.

Counsel's motion to withdraw is granted.

Entered for the Court

Terrence L. O'Brien
Circuit Judge