

UNITED STATES COURT OF APPEALS

APR 26 2001

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GUSTAVO AVILA-RIVAS, also
known as Hector Rivas-Trujillo, also
known as Hecotor Avila-Rivas,

Defendant - Appellant.

No. 00-1387

(D.C. No. 00-CR-38-D)

(D. Colo.)

ORDER AND JUDGMENT*

Before **SEYMOUR, McKAY**, and **BRORBY**, Circuit Judges.

After examining the briefs and the 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.

Defendant pled guilty to one count of unlawful reentry of an alien after deportation in violation of 8 U.S.C. § 1326(a). The district court sentenced him

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

to forty-one months in prison followed by a three-year term of supervised release. Defendant's counsel filed a timely notice of appeal and has subsequently filed a brief pursuant to Tenth Circuit Rule 46.4(B)(1) and Anders v. California, 386 U.S. 738 (1967), accompanied by a request for leave to withdraw.

Anders holds that "if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw." Id. at 744. Counsel must also submit a brief "referring to anything in the record that might arguably support the appeal." Id. The appellant must be furnished with a copy of counsel's brief and must be allowed time "to raise any points that he chooses; the court . . . then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous." Id. If the court finds the case frivolous, it may grant counsel's request to withdraw and dismiss the appeal. Id.

The only potentially appealable issue raised in counsel's Anders brief is whether Defendant's sentence was correctly calculated under the Sentencing Guidelines. We find that issue to be frivolous. Our review of the record and the relevant sentencing guidelines reveals nothing that would indicate a miscalculated sentence in the instant case. Counsel's brief contains a certificate of service certifying that Defendant was furnished with a copy of the brief by United States mail on December 5, 2000. Aplt. Br., at 12. We have received no indication that

Defendant wishes to raise additional issues. We therefore grant counsel leave to withdraw and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge