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Opinions of the United
States Court of Appeals
for the Third Circuit

1-9-2008

USA v. Villegas-Rodriguez

Precedential or Non-Precedential: Non-Precedential

Docket No. 06-3400

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-3400

UNITED STATES OF AMERICA

v.

ERICK VILLEGAS-RODRIGUEZ,

Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
Criminal No. 05-cr-00202
District Judge: Honorable Paul S. Diamond

Submitted Under Third Circuit L.A.R. 34.1(a)
on January 8, 2008

Before: FISHER, HARDIMAN AND ALDISERT, Circuit Judges

(Filed January 9, 2008)

OPINION

ALDISERT, Circuit Judge

Before us is an appellate brief filed by counsel for Appellant pursuant to Anders v.

California, 386 U.S. 738 (1986), and a motion to withdraw as counsel. Under Anders, defense counsel must submit a brief referring to anything in the record that might arguably support an appeal. Id. at 744. An Anders brief must (1) “satisfy the Court that counsel has thoroughly examined the record in search of appealable issues,” United States v. Youla, 241 F.3d 296, 300 (3d Cir. 2001); (2) identify any “issues arguably supporting the appeal even though the appeal was wholly frivolous,” Smith v. Robbins, 528 U.S. 259, 285 (2000); and (3) “explain why the issues are frivolous,” United States v. Marvin, 211 F.3d 778, 781 (3d Cir. 2000). After notification of counsel’s filing of the Anders brief, Appellant did not file a pro se brief.

In the Anders brief, counsel identified a possible appealable issue in the sentencing of Appellant to 10 months of imprisonment and five years of supervised release for a second violation of a previously imposed term of supervised release. Nonetheless, counsel deems an appeal of this issue to be frivolous.

In reviewing a sentence for a violation of supervised release, this Court will apply the same reasonableness analysis which is applicable to the review of any custodial sentence. United States v. Bungar, 478 F.3d 540, 542 (3d Cir. 2007). We conclude that this second sentence imposed for violating supervised release met the standard of reasonableness set forth in United States v. Cooper, 437 F.3d 324 (3d Cir. 2006). After acknowledging that the guideline range was advisory and not mandatory, the District Court rejected the Government’s suggestion of a sentence above the guidelines and imposed a sentence of ten months imprisonment. The sentence imposed was within the

advisory sentencing guideline of four to ten months.

We are satisfied that defense counsel's motion to withdraw follows "a full examination of all of the proceedings," Anders, 386 U.S. at 744, "that the attorney has provided the client with a diligent and thorough search of the record for any arguable claim that might support the client's appeal," McCoy v. Court of Appeals of Wisconsin, 486 U.S. 429, 442 (1988), and that the appeal is wholly frivolous as it "lacks any basis in law or fact," id. at 438 n.10. Therefore, the Anders brief is accepted, and counsel is not required to file a petition for writ of certiorari in the Supreme Court of the United States.

The judgment of the District Court will be affirmed.