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USA v. Bautista

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1707

UNITED STATES OF AMERICA

vs.

FREDY BAUTISTA

Appellant.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal No. 02-cr-00186-1)
District Judge: The Honorable John R. Padova

Submitted Under Third Circuit LAR 34.1(a)
June 21, 2004

Before: NYGAARD, McKEE, and CHERTOFF, Circuit Judges.

(Filed: July 7, 2004)

OPINION OF THE COURT

NYGAARD, Circuit Judge.

Fredy Bautista pleaded guilty to conspiracy to distribute five or more kilograms of cocaine within 1000 feet of a school, in violation of 21 U.S.C. § 846. The District Court sentenced him to 87 months—the minimum sentence permitted under the applicable guideline range. After being sentenced, Bautista filed a motion for appointment of counsel and then, after the period for filing his notice of appeal had expired, filed a notice of appeal. The District Court directed its clerk of court to enter Bautista’s notice of appeal *nunc pro tunc* and allow Bautista to proceed *in forma pauperis*. We have jurisdiction under 28 U.S.C. § 1291.

Bautista’s appointed counsel on appeal, who was also his counsel before the District Court, has filed a brief and motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). Bautista has also filed his own *pro se* brief and reply brief and the government has filed its brief agreeing with Bautista’s counsel that there are no non-frivolous issues for appeal in this case. We have carefully reviewed all submissions and the record and agree with Bautista’s counsel and the government that there are no non-frivolous issues in this appeal and the District Court did not err.

Accordingly, we will grant Bautista’s counsel’s motion to withdraw and affirm the order of the District Court.