

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

SEP 11 2003

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN LUIS REYES-CARRILLO also
known as Juan Ruiz Reyes-Carrillo,

Defendant-Appellant.

No. 02-4238
(D.C. No. 2:02-CR-408-PGC)
(D. Utah)

ORDER AND JUDGMENT*

Before **TACHA**, Chief Circuit Judge, **McKAY** and **McCONNELL**, 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 Reyes-Carrillo appeals the district court's calculation of his

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

sentencing guideline range. Defendant pleaded guilty to illegal re-entry in violation of 8 U.S.C. § 1326. The Government filed a Notice of Sentence Enhancement because Defendant had been previously convicted of a felony. Defendant did not object to any of the facts or calculations in the Presentence Report, and he did not file a motion for downward departure.

At sentencing, the district court accepted the calculation of the sentencing range in the Presentence Report and sentenced Defendant to the low end of the sentencing range to a sentence of 57 months of custody and 36 months of supervised release. The sentencing range of 57 to 71 months was based on an adjusted base offense level of 24, decreased three levels for acceptance of responsibility, for a net offense level of 21, and a criminal history category of IV.

This sentence was based on Defendant's previous convictions of conspiracy to deliver a controlled substance in 1990 which resulted in a sentence of 21 months in prison and his conviction for transport/sale of a controlled substance in 1998 which resulted in a sentence of 365 days in jail. Defendant was deported in August 2001, and he had been deported twice before. He later re-entered the United States which resulted in the current arrest.

Appellant's counsel filed a brief following the mandate of Anders v. California, 386 U.S. 738 (1967). This filing included all the appropriate notices to Appellant. Counsel filed a simultaneous Motion to Withdraw. Appellant has

not notified this court that he has new counsel nor has he filed a supplemental brief.

Our review of the record and counsel's Anders' brief indicates that the sentence imposed by the district court was at the low end of the correct sentencing guideline range of 57-71 months based on his adjusted offense level of 21 and criminal history category of IV.

Counsel's Motion to Withdraw is **GRANTED**.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge