

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

SEP 18 2003

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HORACIO RODRIGUEZ-VILLALBA,

Defendant-Appellant.

No. 03-1078

(D.C. No. 02-CR-222-B)

(D. Colorado)

ORDER AND JUDGMENT*

Before **KELLY, BRISCOE, and LUCERO**, Circuit Judges.

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.

Defendant Horacio Rodriguez-Villalba pled guilty to conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846, and was sentenced to a term

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

of imprisonment of 78 months. He appeals from his conviction and sentence. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a) and affirm.

Defendant's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738, 744 (1967), asserting there are no legitimate challenges to the validity of defendant's guilty plea or to his sentence. Counsel has also filed a motion to withdraw from his representation of defendant. Counsel provided defendant with a copy of the brief. Neither defendant nor the government has filed a response to the Anders brief.

Pursuant to our duty under Anders, we have conducted an independent review of the record and agree with defendant's counsel that the appeal is frivolous. There was a factual basis for defendant's plea and it was knowing and voluntary. In sentencing defendant, the district court properly calculated the offense level and the criminal history category. The sentence imposed was the lowest allowable under the applicable guideline range. We find no issue that properly might be the subject of an appeal.

AFFIRMED. Counsel's motion to withdraw is GRANTED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge