

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

DEC 7 2000

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MANUEL VILLAREAL-GARCIA,

Defendant-Appellant.

No. 99-4247

(D.C. No. 99-CR-215)

(D. Utah)

ORDER AND JUDGMENT*

Before **BALDOCK, HENRY**, and **LUCERO**, Circuit Judges.**

Defendant Manuel Villareal-Garcia pled guilty to illegal re-entry of a deported alien in violation of 8 U.S.C. § 1326. The district court sentenced Defendant to 57 months imprisonment based upon a guideline range of 46-57 months. On appeal, Defendant claims his sentence is excessive. Defense counsel has filed an Anders Brief, suggesting the record contains no meritorious issues for appeal. See Anders v. California,

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining the briefs and appellate record, this panel has determined unanimously to honor the parties request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(A)(2). The case is therefore ordered submitted without oral argument.

386 U.S. 738 (1967). Because we lack jurisdiction to review Defendant’s sentence, we dismiss the appeal.

Under 18 U.S.C. § 3742(a)(1) & (2), a defendant may appeal a sentence which “was imposed in violation of law,” or “as a result of an incorrect application of the sentencing guidelines.” See United States v. Brye, 146 F.3d 1207, 1214 (10th Cir. 1998) (court of appeals is empowered to review a sentence within the applicable guideline range where defendant demonstrates the district court misunderstood the guidelines or its authority to act under them). This grant of jurisdiction does not include an “abuse of discretion” review for sentences legally imposed within the guideline range. See United States v. Garcia, 919 F.2d 1478, 1480-81 (10th Cir. 1990). In this case, Defendant does not point to any error of law or misapplication of the sentencing guidelines. Accordingly, we have no jurisdiction to entertain this appeal.

APPEAL DISMISSED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge