

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

JOSE HERNANDEZ-CARBAJAL,  
*Defendant-Appellant.*

No. 01-4248

Appeal from the United States District Court  
for the Middle District of North Carolina, at Durham.  
Frank W. Bullock, Jr., District Judge.  
(CR-00-297)

Submitted: November 8, 2001

Decided: November 20, 2001

Before WILKINS, MICHAEL, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

Louis C. Allen, III, Federal Public Defender, William S. Trivette, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Benjamin H. White, Jr., United States Attorney, Steven H. Levin, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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### OPINION

#### PER CURIAM:

Jose Hernandez-Carbajal appeals the sentence imposed following his guilty plea to re-entry after deportation by an alien previously convicted of an aggravated felony, in violation of 8 U.S.C.A. §§ 1326(a), (b)(2) (West 1999) and distributing 28.3 grams of cocaine hydrochloride, in violation of 21 U.S.C.A. §§ 841(a)(1), (b)(1)(C) (West 1999 & Supp. 2001). Hernandez-Carbajal's attorney has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Counsel states there are no meritorious issues for appeal, but contends on Hernandez-Carbajal's behalf that the district court erred in sentencing him to seventy-eight months' imprisonment, which was within the guidelines range of seventy to eighty-seven months. Hernandez-Carbajal was informed of his right to file a pro se supplemental brief but has not done so.

As Hernandez-Carbajal presents no challenge to the calculation of the guidelines range but merely contends his sentence was too high within the correct range, we find he is not entitled to appellate review on his claim. *See United States v. Jones*, 18 F.3d 1145, 1150-51 (4th Cir. 1994); *United States v. Porter*, 909 F.2d 789, 794 (4th Cir. 1990). In addition, we have examined the entire record in this case in accordance with the requirements of *Anders* and find no meritorious issues for appeal. We therefore affirm Hernandez-Carbajal's conviction and sentence.

We deny counsel's motion to withdraw at this time. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If requested by the client to do so, counsel should prepare a timely petition for writ of certiorari, unless counsel believes that such a petition would be frivolous. In that case, counsel may move in this court for leave to withdraw from representation. Counsel's motion must state

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that a copy thereof was served on the client. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*AFFIRMED*