

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4663

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAVIER ORTEGA-MONTOYA, a/k/a Fernando Mercado
Gutierrez,

Defendant - Appellant.

Appeal from the United States District Court for the District of
South Carolina, at Spartanburg. Henry F. Floyd, District Judge.
(7:05-cr-01277-HFF)

Submitted: December 14, 2006

Decided: December 19, 2006

Before MICHAEL, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Hervery B.O. Young, Assistant Federal Public Defender, Greenville,
South Carolina, for Appellant. Isaac Louis Johnson, Jr., OFFICE OF
THE UNITED STATES ATTORNEY, Greenville, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Javier Ortega-Montoya pled guilty to conspiracy to possess with intent to distribute more than fifty grams of methamphetamine and more than 500 grams of a substance containing methamphetamine, in violation of 21 U.S.C. § 846 (2000). The district court sentenced Ortega-Montoya as a career offender to 262 months of imprisonment, the bottom of the properly calculated advisory sentencing guidelines range, after considering that range and the other factors in 18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2006). Ortega-Montoya's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that, in his view, there are no meritorious issues for appeal but challenging the adequacy of the plea colloquy. Ortega-Montoya was informed of his right to file a pro se supplemental brief but has not done so. We affirm.

Counsel questions whether the district court complied with Fed. R. Crim. P. 11 in accepting Ortega-Montoya's guilty plea. Because Ortega-Montoya did not move to withdraw his guilty plea, we review his challenge to the adequacy of the Rule 11 hearing for plain error. United States v. Martinez, 277 F.3d 517, 525 (4th Cir. 2002). We have carefully reviewed the transcript of the Rule 11 hearing and find no error in the district court's acceptance of Ortega-Montoya's guilty plea. See United States v. DeFusco, 949 F.2d 114, 119-20 (4th Cir. 1991).

In accordance with Anders, we have reviewed the entire record for any meritorious issues and have found none. Accordingly, we affirm Ortega-Montoya's conviction and sentence. 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 the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state 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