

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NOE NOVOA MADRIGAL, a/k/a Hector
Cendegas Hernandez, a/k/a Jorge
Gandera, a/k/a Cianca Noe Cejudo,
a/k/a Tony Lopez Carmango, a/k/a
Fernando Falcon Camalgo,
Defendant-Appellant.

No. 01-4061

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
James A. Beaty, Jr., District Judge.
(CR-00-202)

Submitted: August 24, 2001

Decided: October 12, 2001

Before WILKINS, NIEMEYER, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Louis C. Allen, III, Federal Public Defender, Eric D. Placke, Assistant
Federal Public Defender, Greensboro, North Carolina, for Appellant.
Benjamin H. White, Jr., United States Attorney, Arnold L. Husser,
Assistant United States Attorney, Greensboro, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Noe Novoa Madrigal pled guilty to reentry of a deported alien felon and use and possession of a counterfeit alien registration card, in violation of 8 U.S.C.A. § 1326(a) & (b)(2) (West 1999) and 18 U.S.C.A. § 1546(a) (West 2000). He appeals his conviction and sentence. Madrigal's attorney has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), raising one issue but stating that, in his view, there are no meritorious issues for appeal. Madrigal was advised of his right to file a pro se supplemental brief, but has not done so. Because we find the assignment of error to lack merit and discern no other error in the record, we affirm Madrigal's conviction and sentence.

Counsel raises as a potential error the district court's denial of a defense request for a downward departure from the Criminal History category calculated under the Sentencing Guidelines.* This departure was warranted, counsel asserts, because Madrigal's criminal history category significantly overstated his prior criminal conduct. Because the district court clearly recognized its discretion to depart, but concluded that Madrigal's prior criminal conduct was not over-represented by the calculated criminal history category, the court's decision not to grant a downward departure is not reviewable. *See United States v. Bayerle*, 898 F.2d 28, 31 (4th Cir. 1990).

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Madrigal'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 peti-

**U.S. Sentencing Guidelines Manual* (1998).

tion 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