

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAVIER HERNANDEZ-JUAREZ, a/k/a
Ramon Ache Figueroa-Juarez, a/k/a
Javier Hernandez, a/k/a Javier
Sabier Hernandez, a/k/a Ramon
Figueroa-Juarez,
Defendant-Appellant.

No. 02-4849

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
William L. Osteen, District Judge.
(CR-02-168)

Submitted: March 19, 2003

Decided: March 31, 2003

Before LUTTIG, TRAXLER, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Louis C. Allen III, Federal Public Defender, Gregory Davis, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Angela H. Miller, 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Unpublished opinions are not binding precedent in this circuit.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:

Javier Hernandez-Juarez, a native and citizen of Mexico, appeals his conviction and 95-month sentence after pleading guilty pursuant to a written plea agreement to illegally reentering the United States after having been previously deported subsequent to a conviction for an aggravated felony. His attorney has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal but raising the issue of whether the district court abused its discretion in sentencing Hernandez-Juarez to the high end of the sentencing guidelines range. Although notified by both this court and his attorney of his right to file a pro se supplemental brief, Hernandez-Juarez failed to file such a brief. Finding no reversible error, we affirm.

The district court adopted Hernandez-Juarez's presentence report ("PSR"), which properly calculated both Hernandez-Juarez's base offense level and his criminal history. The PSR calculated a sentencing guidelines range of 77-96 months, and the court sentenced Hernandez-Juarez to a 95-month term of imprisonment. A defendant may not challenge on appeal the district court's discretionary decision to impose sentence at a particular point within a properly calculated guidelines range. *United States v. Jones*, 18 F.3d 1145, 1151 (4th Cir. 1994); *United States v. Porter*, 909 F.2d 789, 794-95 (4th Cir. 1990). Hernandez-Juarez's claim that the district court abused its discretion in sentencing him to a 95-month term of imprisonment thus fails. Hernandez-Juarez raises no other issue on appeal.

We have examined the entire record in this case in accordance with the requirements of *Anders* and find no meritorious issues for appeal. Accordingly, we affirm Hernandez-Juarez'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