

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 96-4655

ALEJANDRO AVILES-GONZALEZ, a/k/a

Reyes Aviles, a/k/a Alex Aviles,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Richard L. Voorhees, District Judge.
(CR-96-27-V)

Submitted: May 12, 1998

Decided: June 4, 1998

Before ERVIN, LUTTIG, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Randolph Marshall Lee, Charlotte, North Carolina, for Appellant.
Brian Lee Whisler, OFFICE OF THE UNITED STATES ATTOR-
NEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Alejandro Aviles-Gonzales appeals from his sentence for unlawful entry into the United States after deportation, in violation of 8 U.S.C.A. § 1326 (West Supp. 1998). Aviles-Gonzales's attorney filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), addressing the failure of the district court to depart downward from the applicable Guidelines range. Aviles-Gonzales was informed of his right to file a supplemental brief, but he has not done so. The Government has filed a motion to dismiss.

After recognizing its authority to do so, the district court declined to depart downward on the basis of Aviles-Gonzales's familial motive for re-entering the United States illegally. The court's decision is not reviewable on appeal. See United States v. Bayerle, 898 F.2d 28, 31 (4th Cir. 1990).

Aviles-Gonzales, however, urges that the Supreme Court's decision in Koon v. United States, 518 U.S. 81 (1996), requires that we apply an "abuse of discretion" standard to a judge's decision not to depart from a prescribed Guidelines range. The Koon case, however, concerned the appropriate standard for reviewing a judge's decision to depart. Id. (the Court "granted certiorari to determine the standard of review governing appeals from a district court's decision to depart from the sentencing ranges in the Guidelines"). Because Koon did not involve a judge's decision not to depart, it does not affect the law of this Circuit barring appeal where a district court decides not to depart.

In accordance with Anders, we have examined the entire record in this case and find no reversible error. Because the only issue raised by counsel is unappealable, we grant the Government's motion to dismiss. The 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 conten-

tions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED