

FEB 01 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDY CUONG NGUYEN,

Defendant - Appellant.

No. 07-10076

D.C. No. CR-06-00325-HG

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, District Judge, Presiding

Submitted January 14, 2008**

Before: HALL, O'SCANLAIN, and PAEZ, Circuit Judges.

Andy Cuong Nguyen appeals from his conviction and 27-month sentence imposed following a guilty plea to conspiracy to commit alien smuggling, in violation of 18 U.S.C. §§ 371 & 2 and 8 U.S.C. § 1324(a)(2)(B)(ii). Pursuant to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Anders v. California, 386 U.S. 738 (1967), Nguyen's counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided the appellant the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

We have conducted an independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction. We dismiss the appeal of the sentence in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

Counsel's motion to withdraw is granted.

The conviction is **AFFIRMED**; the appeal of the sentence is **DISMISSED**.