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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ERIC R. BUCHANAN,</p> <p>Defendant - Appellant.</p>
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No. 06-30514

D.C. No. CR-05-00209-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ and W. FLETCHER, Circuit Judges.

Eric R. Buchanan appeals from his jury-trial conviction and 60-month sentence for attempted possession with intent to distribute 500 grams or more of

* 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).

cocaine, and distribution of ecstasy, both in violation of 21 U.S.C. § 841(a)(1). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Buchanan's counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. Appellant has filed a pro se supplemental opening brief and a motion to take judicial notice. The motion for judicial notice is granted. No answering brief has been filed.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief on direct appeal, especially in light of the fact that the district court has subsequently re-sentenced Buchanan.

Counsel's motion to withdraw is **GRANTED**, and the judgment is **AFFIRMED**.