

United States Court of Appeals
For the Eighth Circuit

No. 16-3648

United States of America

Plaintiff - Appellee

v.

Franklin Alberto Mendez Alvarado

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Davenport

Submitted: May 10, 2017

Filed: May 15, 2017

[Unpublished]

Before LOKEN, MURPHY, and BENTON, Circuit Judges.

PER CURIAM.

Franklin Alberto Mendez Alvarado pled guilty to illegally re-entering the United States as a previously deported alien, subsequent to a conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). His counsel has moved to withdraw and filed a brief under *Anders v. California*, 386 U.S. 738 (1967), challenging his sentence, suggesting that an error under Federal Rule of Criminal

Procedure 11(b)(1)(B) occurred during the change-of-plea hearing, and asserting that the district court¹ did not use the correct Guidelines Manual for sentencing purposes. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Upon careful review, this court concludes that the issues raised by counsel lack merit. *See United States v. Dominguez Benitez*, 542 U.S. 74, 76 (2004) (plain-error standard applies where Rule 11 error was not preserved by timely objection; defendant must show that, but for such error, he would not have entered plea); U.S.S.G. § 1B1.11 (court shall use Guidelines Manual in effect on date defendant is sentenced, unless that edition violates ex post facto clause). Having independently reviewed the record pursuant to *Penson v. Ohio*, 488 U.S. 75 (1988), this court finds no non-frivolous issues for appeal.

The judgment is affirmed, and counsel's motion to withdraw is granted.

¹The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.