

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

November 1, 2013

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EVA GUTIERREZ,

Defendant - Appellant.

No. 13-2029
(D.C. No. 2:11-CR-00487-RB-11)
(D. N.M.)

ORDER DISMISSING APPEAL

Before **HARTZ, O'BRIEN**, and **GORSUCH**, Circuit Judges.

Eva Gutierrez pleaded guilty to two counts of an indictment: 18 U.S.C. § 371 (conspiracy) and 18 U.S.C. § 924(a)(1)(A) (false statements to a federally licensed arms dealer), and agreed to waive her right to appeal.¹ These counts reflected her involvement in a scheme to straw purchase firearms and deliver the firearms to Mexico. The district judge sentenced her to 21 months of imprisonment, which is less than the Guidelines recommendation of 30 to 37 months, and imposed supervised release for three years.

¹ “[T]his Court's precedents preclude dismissal on the basis of a waiver of appeal where the government has neither filed a motion to enforce the waiver nor raised the waiver in [a] brief.” *United States v. Calderon*, 428 F.3d 928, 930 (10th Cir. 2005).

Following a notice of appeal, Gutierrez’s appointed counsel moved to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel states there are no meritorious grounds, in his view, to pursue an appeal. As required under *Anders*, counsel has filed a brief with the court “referring to anything in the record that might arguably support the appeal,” *id.* at 744, and the government has declined to file a response brief. This court then gave Gutierrez an opportunity to file a pro se brief. Her response stated she had “no further objections.” (Letter in Response.)

Our task in an *Anders* case is to “conduct a full examination of the record to determine whether defendant's claims are wholly frivolous.” *United States v. Calderon*, 428 F.3d 928, 930 (10th Cir.2005). If they are, we may grant counsel’s motion to withdraw and dismiss the appeal. *Id.* “Frivolous means ‘[l]acking a legal basis or legal merit; not serious; not reasonably purposeful.’” *United States v. Lain*, 640 F.3d 1134, 1137 (10th Cir. 2011) (quoting Black’s Law Dictionary 1596 (8th ed.2004)). After a careful review of the entire record, we find no reason to question the voluntariness of Gutierrez’s plea or the reasonableness of her sentence.

We GRANT the motion to withdraw and DISMISS this appeal.

Upon our inquiry the parties registered no objection to unsealing materials filed in this matter. All materials in the file are hereby unsealed.

Entered by the Court:

Terrence L. O’Brien
United States Circuit Judge