



**States Court of Appeals
THE EIGHTH CIRCUIT**

No. 01-2839

United States of America,

Appellee,

v.

Jorge Pesina-Cardenas,

Appellant.

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* Appeal from the United States

* District Court for the

* Southern District of Iowa.

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* [UNPUBLISHED]

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Submitted: December 6, 2001

Filed: December 28, 2001

Before WOLLMAN, Chief Judge, HANSEN, and RILEY, Circuit Judges.

PER CURIAM.

Jorge Pesina-Cardenas pled guilty to reentering the United States illegally after he had been convicted of an aggravated felony and deported, in violation of 8 U.S.C. § 1326(a) and (b)(2). The district court¹ sentenced him to 77 months imprisonment and 3 years supervised release. On appeal, Pesina-Cardenas's counsel filed a brief arguing the court should have granted a downward departure based upon cultural assimilation and also moved to withdraw under Anders v. California, 386 U.S. 738 (1967). Pesina-Cardenas has not filed a pro se supplemental brief.

¹The Honorable Charles R. Wolle, United States District Judge for the Southern District of Iowa.

The issue counsel raises is unreviewable because the district court acknowledged that it had authority to depart but found that the facts did not support a departure. See United States v. Correa, 167 F.3d 414, 417 (8th Cir. 1999).

We have independently reviewed the record in accordance with Penson v. Ohio, 488 U.S. 75 (1988). Based on that review, we believe the district court should have more clearly informed Pesina-Cardenas that his guilty plea had not yet been accepted before the court informed him of his trial rights. See Fed. R. Crim. P. 11(c)(3). However, we do not believe what transpired during the plea hearing raises any nonfrivolous issues for appeal.

Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.