

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-1066

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United States of America,

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Appellee,

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v.

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Appeal from the United States

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District Court for the

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District of Minnesota.

Marcos Alejandro Martinez-Rodriguez,

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also known as Alejandro Rodriguez,

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**[UNPUBLISHED]**

also known as Jose Ortego,

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Appellant.

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Submitted: July 16, 2003

Filed: July 21, 2003

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Before LOKEN, Chief Judge, MURPHY, and RILEY, Circuit Judges.

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PER CURIAM.

Marcos Martinez-Rodriguez pleaded guilty to illegal reentry following deportation after conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a), (b)(2). At sentencing, the district court<sup>1</sup> denied Martinez-Rodriguez's motion for downward departure and sentenced him to 71 months imprisonment and 3 years supervised release. On appeal, counsel has moved to withdraw and filed a

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<sup>1</sup>The HONORABLE JAMES M. ROSENBAUM, Chief Judge, United States District Court for the District of Minnesota.

brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court erroneously sentenced Martinez-Rodriguez at the top of the Guidelines range, and that the court should have granted a downward departure. We reject these arguments.

We do not review a sentence that has been imposed at the top of a properly determined Guidelines range. See United States v. Woodrum, 959 F.2d 100, 101 (8th Cir. 1992) (per curiam). Nor do we review a sentencing court's denial of a downward departure, where, as here, there is no indication the court believed it lacked the authority to depart. See United States v. Lopez-Arce, 267 F.3d 775, 783-84 (8th Cir. 2001).

We have reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), and we find no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm.

A true copy.

Attest:

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