

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

March 7, 2006

Before

Hon. FRANK H. EASTERBROOK, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 03-3200

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BENICIO RINCON-ALONZO,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division

No. 02-CR-1251

Elaine E. Bucklo,
Judge.

O R D E R

Benicio Rincon-Alonzo's appointed counsel moved to withdraw under *Anders v. California*, 386 U.S. 738 (1967), arguing that he could not discern a nonfrivolous basis for the appeal. We held that we could not determine whether Rincon-Alonzo, who was sentenced before the Supreme Court decided *United States v. Booker*, 125 S.Ct. 738 (2005), had a valid basis for appeal without knowing whether the district court would have given him the same sentence if it had known the guidelines were merely advisory. Accordingly, we kept the motion to withdraw under advisement and ordered a limited remand so that the district court could resolve the uncertainty. *See United States v. Paladino*, 401 F.3d 471, 481 (7th Cir. 2005).

The district court has now responded, and informs us that it would have given Rincon-Alonzo the same sentence. We informed counsel that he would have

seven days after the district court's response to submit any further argument concerning his motion to withdraw, and after the district court issued its response we invited Rincon-Alonzo and the government to file any arguments they might have regarding the disposition of the appeal. No party has responded.

Because the district court would have given Rincon-Alonzo the same sentence had it understood the guidelines to be advisory, his sentence was not in error and he has no nonfrivolous basis for an appeal. Accordingly, we now take up counsel's motion to withdraw, GRANT the motion and DISMISS this appeal.