

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-1303

UNITED STATES OF AMERICA

v.

LEOCADIO HEREDIA-RONDON,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Crim. No. 01-00032-5)
Honorable Stewart Dalzell, District Judge

Submitted under Third Circuit LAR 34.1(a)
February 28, 2003

BEFORE: SCIRICA, GREENBERG, and GIBSON*, Circuit Judges,

(Filed: March 4, 2003)

OPINION OF THE COURT

*Honorable John R. Gibson, Senior Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

GREENBERG, Circuit Judge.

Leocadio Heredia-Rondon pursuant to a plea agreement pleaded guilty to a count of an indictment charging him with distribution of heroin within 1000 feet of a school in violation of 21 U.S.C. 860. The presentence report established his total offense level at 23 and his criminal history category as I, yielding a sentencing range of 46 to 57 months. The court imposed a 46-month custodial term followed by a five-year term of supervised release. In addition it imposed a \$500 fine. Heredia-Rondon appeals.

Heredia-Rondon's attorney has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), indicating that he can raise no non-frivolous issues on this appeal and the government has filed a brief agreeing. Though given the opportunity, Heredia-Rondon has not filed a brief. We, too, are satisfied that he cannot raise any non-frivolous issues on this appeal and, consequently, we will affirm. Nevertheless, we note that Heredia-Rondon may wish to raise an issue with regard to the possible ineffectiveness of his counsel. Accordingly, our affirmance is without prejudice to him being able to raise that issue in a proceeding under 28 U.S.C. 2255. See *United States v. Sandini*, 888 F.2d 300, 311-12 (3d Cir. 1989).

The judgment of conviction and sentence entered January 23, 2002, will be

affirmed.

/s/ Morton I. Greenberg
Circuit Judge