

United States Court of Appeals
For the Eighth Circuit

No. 17-1921

United States of America

Plaintiff - Appellee

v.

Ivan Avila

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Sioux City

Submitted: December 11, 2017

Filed: December 21, 2017

[Unpublished]

Before GRUENDER, MURPHY, and SHEPHERD, Circuit Judges.

PER CURIAM.

Ivan Avila directly appeals after he pleaded guilty to drug offenses, and the district court¹ sentenced him below the calculated guidelines range. His counsel has

¹The Honorable Leonard T. Strand, Chief Judge, United States District Court for the Northern District of Iowa.

moved for leave to withdraw and has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing that the district court erred in applying a guidelines enhancement for possessing a firearm in connection with the drug offenses, under U.S.S.G. § 2D1.1(b)(1).

After careful consideration, we conclude that the district court committed no procedural error, that the government met its burden of proof, and that the district court did not clearly err in applying the challenged enhancement. *See* U.S.S.G. § 2D1.1(b)(1), cmt. n. 11 (stating that the enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense); *cf. United States v. Savage*, 414 F.3d 964, 967 (8th Cir. 2005) (holding that the district court did not clearly err in applying § 2D1.1(b)(1) enhancement where the firearm was readily accessible to the defendant and would be available to him in case of a dispute during a drug transaction).

Having independently reviewed the record pursuant to *Penson v. Ohio*, 488 U.S. 75 (1988), we find no nonfrivolous issues for appeal. We thus grant counsel's motion to withdraw and affirm.
