

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4591

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOAQUIN TOSTADO-BARRAZA,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Charlotte. Max O. Cogburn, Jr.,
District Judge. (3:13-cr-00056-MOC-6)

Submitted: April 16, 2015

Decided: April 20, 2015

Before AGEE and KEENAN, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Scott Gsell, LAW OFFICE OF SCOTT GSELL, Charlotte, North
Carolina, for Appellant. Amy Elizabeth Ray, Assistant United
States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joaquin Tostado-Barraza pled guilty without a plea agreement to conspiracy to possess with intent to distribute cocaine and cocaine base and conspiracy to commit money laundering. The district court sentenced him to 120 months' imprisonment. Tostado-Barraza's counsel has submitted a brief in accordance with Anders v. California, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal but questioning whether the district court erred when it applied a two-level enhancement under U.S. Sentencing Guidelines § 2D1.1(b)(1) (2013) because a handgun was possessed. Neither Tostado-Barraza nor the Government has filed a brief. We affirm.

A two-level increase in a defendant's offense level is warranted "[i]f a dangerous weapon (including a firearm) was possessed." USSG § 2D1.1(b)(1). The defendant bears the burden to show that a connection between his possession of a firearm and his narcotics offense is "clearly improbable." United States v. Harris, 128 F.3d 850, 852-53 (4th Cir. 1997) (internal quotation marks omitted). Given that Tostado-Barraza was found in a "stash" trailer, a gun was found on his bed, and numerous holes were located directly behind the trailer containing drug wrapping materials, we conclude that Tostado-Barraza has not met his burden of establishing that a connection between his

possession of a firearm and his offense was clearly improbable. Thus, the district court's finding was not clearly erroneous.

In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm the district court's judgment. This court requires that counsel inform Tostado-Barraza, in writing, of the right to petition the Supreme Court of the United States for further review. If Tostado-Barraza requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Tostado-Barraza. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED