

United States Court of Appeals
For the Eighth Circuit

No. 19-1119

United States of America

Plaintiff - Appellee

v.

Virgil Left Hand, Sr.

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Rapid City

Submitted: December 3, 2019

Filed: December 6, 2019

[Unpublished]

Before SHEPHERD, KELLY, and ERICKSON, Circuit Judges.

PER CURIAM.

Virgil Left Hand, Sr. appeals the district court's¹ judgment entered upon a jury verdict finding him guilty of federal assault offenses. His counsel has moved for

¹The Honorable Jeffrey L. Viken, Chief Judge, United States District Court for the District of South Dakota.

leave to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging the sufficiency of the evidence, and suggesting the district court erred in denying Left Hand a Guidelines reduction for acceptance of responsibility.

We first conclude that the evidence at trial was sufficient to support Left Hand's convictions. See United States v. Birdine, 515 F.3d 842, 844 (8th Cir. 2008) (sufficiency of evidence to support conviction is reviewed de novo, viewing evidence in light most favorable to jury verdict, and giving verdict benefit of all reasonable inferences; this court will not second-guess jury's credibility determinations, and will reverse only if no reasonable jury could have found defendant guilty beyond reasonable doubt). We further conclude that the district court did not clearly err in denying Left Hand's request for an acceptance-of-responsibility reduction. Although Left Hand conceded he struck the victim, he still challenged an essential element of one of his offenses by introducing evidence at trial that another person may have caused his victim's injuries through other actions. See USSG § 3E1.1, cmt. (n.2) (reduction for acceptance of responsibility is not intended to apply to defendant who puts government to proof at trial by denying essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse); United States v. Ervasti, 201 F.3d 1029, 1043 (8th Cir. 2000) (standard of review).

Finally, we have reviewed the record pursuant to Penson v. Ohio, 488 U.S. 75 (1988), and have found no non-frivolous issues. Accordingly, we grant counsel's motion, and affirm.
