

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 07-1507

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United States of America,

Appellee,

v.

Emmanuel Herron,

Appellant.

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Appeal from the United States  
District Court for the  
Northern District of Iowa.

[UNPUBLISHED]

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Submitted: April 29, 2008

Filed: May 2, 2008

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Before WOLLMAN, RILEY, and GRUENDER, Circuit Judges.

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PER CURIAM.

In this direct criminal appeal, Emmanuel Herron (Herron) challenges the district court's<sup>1</sup> judgment entered upon a jury verdict finding Herron guilty of drug and firearm offenses. Herron's counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging the admission of evidence derived from a warrantless entry. Because Herron did not file a motion to suppress in the district court, we are "not in a position to intelligently and responsibly" conduct plain error review of the matter. See United States v. Wenner, 417 F.2d 979, 981-82

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<sup>1</sup>The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

(8th Cir. 1969) (refusing to consider a Fourth Amendment argument asserted for first time on appeal; noting the plain error rule should be applied with caution, not liberally, and should be invoked only to avoid a clear miscarriage of justice).

Having reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues.

We affirm the judgment of the district court, and we grant counsel's motion to withdraw.

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