

United States Court of Appeals
For the Eighth Circuit

No. 23-1263

United States of America

Plaintiff - Appellee

v.

Brian Tyrone Brand

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: October 2, 2023

Filed: October 5, 2023

[Unpublished]

Before COLLOTON, GRUENDER, and ERICKSON, Circuit Judges.

PER CURIAM.

Brian Brand appeals the within-Guidelines-range sentence the district court¹ imposed after he pled guilty to an ammunition offense. His counsel has moved for

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

leave to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing the district court erred in applying a cross reference to the provision for attempted second-degree murder to calculate his advisory Guidelines imprisonment range.

Having reviewed the record, we conclude the district court did not err in calculating the Guidelines range using the cross-reference. See United States v. Tunley, 664 F.3d 1260, 1262 (8th Cir. 2012) (reviewing district court's factual findings in applying cross reference for clear error and its application of Guidelines de novo); see also United States v. Conley, No. 21-2094, 2022 WL 2979771, at *2 (8th Cir. 2022) (unpublished per curiam) (affirming application of cross-reference to Guidelines provision for attempted second-degree murder; noting case law showing that shooting at group of people demonstrates specific intent to kill). Further, we have reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), and have found no non-frivolous issues for appeal.

Accordingly, we affirm the judgment, and we grant counsel's motion to withdraw.
