

United States Court of Appeals
For the Eighth Circuit

No. 17-2464

United States of America

Plaintiff - Appellee

v.

Nelson Olmeda, also known as Diego

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: March 15, 2018

Filed: March 29, 2018

[Unpublished]

Before BENTON, MURPHY, and KELLY, Circuit Judges.

PER CURIAM.

Nelson Olmeda directly appeals the sentence imposed by the district court¹ following his guilty plea to drug charges. His counsel has moved to withdraw and

¹The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri.

has submitted a brief under Anders v. California, 386 U.S. 738 (1967), discussing whether the sentence was impermissibly enhanced under 21 U.S.C. § 851.

We conclude that, absent any allegation that the decision was based on an improper factor, it was within the government’s discretion to subject Olmeda to the enhanced sentence, see United States v. LaBonte, 520 U.S. 751, 761-62 (1997); and that his prior felony drug conviction was a permissible basis for the enhancement, see Tex. Health & Safety Code Ann. § 481.121(b)(3) (possession of more than 4 ounces of marijuana is “state jail felony”); Texas Penal Code Ann. § 12.35 (state jail felony is punishable by confinement for up to 2 years); United States v. Jones, 559 F.3d 831, 837 (8th Cir. 2009) (21 U.S.C. §§ 841(b)(1)(A) and 851 permit use of simple felony drug possession conviction for enhancement).

Having independently reviewed the record pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues for appeal. Accordingly, we grant counsel leave to withdraw, and we affirm.
