

APPENDIX TO PETITION

Eighth Circuit panel opinion in <i>United States v. Mayokok</i> , 747 Fed.Appx. 441 (8th Cir. 2019)	1a
Order Denying Petition for Rehearing to the Panel, filed February 27, 2019	4a
Statutory Provision Involved 18 U.S.C.A. 3553	5a

United States Court of Appeals
For the Eighth Circuit

No. 17-2904

United States of America

Plaintiff - Appellee

v.

Joel Augutuk Mayokok

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: October 15, 2018

Filed: January 9, 2019
[Unpublished]

Before SHEPHERD, KELLY, and STRAS, Circuit Judges.

PER CURIAM.

Joel Augutuk Mayokok originally received a 240-month prison sentence for knowingly receiving child pornography, 18 U.S.C. § 2252(a)(2), (b)(1). This sentence, which was well below his advisory Sentencing Guidelines range, was vacated on appeal when he successfully challenged a five-level enhancement to his offense level. At resentencing, the district court¹ again imposed a 240-month

¹The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota.

sentence, near the midpoint of his new Guidelines range. Mayokok challenges the substantive reasonableness of his sentence, and we affirm.

In setting a 240-month sentence for a second time, the district court emphasized the statutory sentencing factors. *See* 18 U.S.C. § 3553(a). It discussed, among other things, Mayokok’s traumatic childhood, his cultural contributions to the Native American community, his need for treatment, his lengthy criminal history, and the need to protect the public. It then concluded that 240 months was “a fair sentence” given “the circumstances in this case.”

It may seem counterintuitive that Mayokok received the same sentence both times, even after he emerged from his successful appeal with a lower advisory Guidelines range. But each time, the court stressed that the Guidelines range was only its “starting point” or “initial benchmark” for setting his sentence, and that its analysis of the statutory sentencing factors shaped its decision more than anything else. *See Beckles v. United States*, 137 S. Ct. 886, 892 (2017) (“[T]he advisory Guidelines do not fix the permissible range of sentences. To the contrary, they merely guide the exercise of a court’s discretion in choosing an appropriate sentence within the *statutory* range.” (emphasis added)).

Mayokok argues that his 240-month sentence is substantively unreasonable because it “does not reflect, in a realistic and meaningful way,” his mitigating circumstances, including his traumatic childhood and his chemical-dependency issues. There is no basis for us to conclude that the district court “fail[ed] to consider a relevant and significant factor, [gave] significant weight to an irrelevant or improper factor, or consider[ed] the appropriate factors but commit[ted] a clear error of judgment in weighing those factors.” *United States v. Miner*, 544 F.3d 930, 932 (8th Cir. 2008). The court addressed Mayokok’s mitigating circumstances but gave greater weight to the seriousness of his crime and to his “very troubling, and very violent criminal history,” which it was permitted to do in exercising its discretion. *See United States v. Ryser*, 883 F.3d 1018, 1022 (8th Cir. 2018).

We affirm the judgment of the district court.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2904

United States of America

Appellee

v.

Joel Augutuk Mayokok

Appellant

Appeal from U.S. District Court for the District of Minnesota - St. Paul
(0:15-cr-00010-SRN-1)

ORDER

The petition for rehearing by the panel is denied.

February 27, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

 KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Prior Version Held Unconstitutional by U.S. v. Hecht, 4th Cir.(S.C.), Dec. 04, 2006

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part II. Criminal Procedure

Chapter 227. Sentences (Refs & Annos)

Subchapter A. General Provisions (Refs & Annos)

18 U.S.C.A. § 3553

§ 3553. Imposition of a sentence

Effective: December 21, 2018

Currentness

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) **Application of guidelines in imposing a sentence.--**

(1) **In general.**--Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.