

United States Court of Appeals
For the Eighth Circuit

No. 17-3340

United States of America

Plaintiff - Appellee

v.

Buck Otto White, also known as Timothy Joseph Hoffman

Defendant - Appellant

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

Submitted: October 15, 2018
Filed: December 12, 2018
[Unpublished]

Before SMITH, Chief Judge, LOKEN and GRUENDER, Circuit Judges.

PER CURIAM.

A jury convicted Buck Otto White of two counts of being a felon in possession of firearms and ammunition, in violation of 18 U.S.C. § 922(g)(1), and two counts of possessing stolen firearms and ammunition, in violation of 18 U.S.C. § 922(j). The

district court¹ determined that White qualified as an armed career criminal, *see* 18 U.S.C. 924(e), and White’s advisory sentencing guidelines range was 324 to 405 months. The district court varied downward and sentenced him concurrently on all four counts to a total term of 300 months’ imprisonment and 5 years’ supervised release. White later moved to vacate his sentence under 28 U.S.C. § 2255, arguing that he did not qualify as an armed career criminal. The district court granted the motion and vacated White’s original sentence. White’s revised guidelines range was 120 to 150 months’ imprisonment. Upon resentencing, the district court varied upward and imposed a total sentence of 210 months’ imprisonment. This consisted of concurrent sentences of 120 months for Counts 1 and 3 and concurrent sentences of 90 months for Counts 2 and 4, with the two concurrent sentences to be served consecutively. White now appeals, arguing that the revised sentence is substantively unreasonable.

We review the substantive reasonableness of a sentence under the deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). “A district court abuses its discretion when it (1) fails to consider a relevant factor that should have received significant weight; (2) gives significant weight to an improper or irrelevant factor; or (3) considers only the appropriate factors but in weighing those factors commits a clear error of judgment.” *United States v. Borromeo*, 657 F.3d 754, 756 (8th Cir. 2011). Because White’s 210-month sentence exceeded his recommended guidelines range, we may not apply a presumption of reasonableness to the sentence, *see Gall*, 552 U.S. at 51, but it is an “unusual case when we reverse a district court sentence . . . as substantively unreasonable,” *United States v. Feemster*, 572 F.3d 455, 464 (8th Cir. 2009).

¹The Honorable Joan N. Erickson, United States District Judge for the District of Minnesota.