

APPedix A
Opinion of the Eighth Circuit

United States Court of Appeals
For the Eighth Circuit

No. 18-2184

United States of America

Plaintiff - Appellee

v.

Gary Allen Kachina

Defendant - Appellant

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

Submitted: April 7, 2020

Filed: April 16, 2020

[Unpublished]

Before COLLOTON, WOLLMAN, and KELLY, Circuit Judges.

PER CURIAM.

Following this court's remand for resentencing, United States v. Kachina, 715 Fed. Appx. 587 (8th Cir.) (unpublished per curiam) (vacating sentence imposed after jury found defendant guilty of felon-in-possession offense because intervening case law established he was not an armed career criminal under 18 U.S.C. § 924(e)), cert. denied, 139 S. Ct. 271 (2018), the district court resentenced Gary Kachina to 120

965, 971 (8th Cir. 2005). We further conclude that the district court did not abuse its discretion by denying a downward variance, and that the sentence imposed was not unreasonable under the circumstances. See United States v. Parker, 762 F.3d 801, 806 (8th Cir. 2014).

However, we agree with the government that, because the statutory maximum term of supervised release is three years, the district court erred by imposing a five-year term of supervised release. See 18 U.S.C. § 3583(b)(2). Accordingly, we vacate the supervised-release portion of Kachina's sentence and remand with instructions that the district court impose a term of supervised release of "not more than three years." See id. The district court's judgment is otherwise affirmed, and Kachina's pending motions are denied.

Appendix B
order denying petition For Rehearing And Rehearing Enbanc

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2184

United States of America

Appellee

v.

Gary Allen Kachina

Appellant

Appeal from U.S. District Court for the District of Minnesota - St. Paul
(0:15-cr-00068-ADM-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 20, 2020

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

/s/ Michael E. Gans