

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

No: 23-1925

United States of America

Plaintiff - Appellee

v.

James David Welton

Defendant - Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:20-cr-02006-CJW-2)

JUDGMENT

Before GRUENDER, SHEPHERD, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

May 15, 2023

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

/s/ Michael E. Gans

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

No: 23-1925

United States of America

Appellee

v.

James David Welton

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:20-cr-02006-CJW-2)

ORDER

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

June 23, 2023

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

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES DAVID WELTON,

Defendant.

No. 20-CR-2006-CJW-MAR

ORDER

This matter is before the Court on defendant's pro se motion to correct sentence. (Doc. 92). The motion asserts that because defendant's term of incarceration plus his term of supervised release exceed the maximum sentence by eight months, the Court should reduce his sentence accordingly.

Defendant is mistaken in thinking that a term of supervised release is counted in arriving at the maximum term of incarceration. Supervised release is not incarceration. Though defendant is correct that supervised release is imposed as a form of punishment in connection with the offense of conviction and is therefore part of sentence, it is not part of a term of incarceration. Similarly, a criminal fine is also part of a criminal sentence, but it is not part of a term of incarceration.

The statute of conviction here, Title 18, United States Code, Sections 922(g)(1) and 924(a)(2) provides a maximum term of incarceration of ten years and separately provides for a maximum term of supervised release of three years. The Court sentenced defendant to 120 months incarceration and three years of supervised release, both within the statutory maximum terms permitted by statute. (Doc. 64). Thus, there is no error in the sentence to correct.

For these reasons, defendant's motion to correct sentence (Doc. 92) is **denied**.

IT IS SO ORDERED this 29th day of March, 2023.



C.J. Williams
United States District Judge
Northern District of Iowa

**Additional material
from this filing is
available in the
Clerk's Office.**