

United States Court of Appeals
For the Eighth Circuit

No. 26-1001

United States of America

Plaintiff - Appellee

v.

Michael John Vinton

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Western

Submitted: August 21, 2026

Filed: August 26, 2026

[Unpublished]

Before GRUENDER, BENTON, and TRAYNOR, Circuit Judges.

PER CURIAM.

Michael Vinton appeals the above-Guidelines-range sentence the district court imposed after revoking his supervised release. The parties agree that the sentence should be vacated and the matter remanded, as the court relied on evidence not disclosed to counsel. We agree.

We conclude the district court abused its discretion by relying on facts from the probation officer that were not in the record and disclosed to counsel. *See United States v. Richey*, 758 F.3d 999, 1001-02 (8th Cir. 2014) (applying abuse-of-discretion review and noting that this court first reviews a revocation sentence for significant procedural errors; if there is no procedural error, then this court reviews the sentence for substantive reasonableness; a district court commits procedural error by basing a sentence on facts without record support; the government has the burden to present evidence of disputed facts); *see also* Fed. R. Crim. P. 32.1(b)(2)(B) (providing that in revocation proceedings, the defendant is entitled to disclosure of the evidence against him); *United States v. Bennett*, 561 F.3d 799, 802 (8th Cir. 2009) (stating that due process requires disclosure of evidence in revocation proceedings).

Accordingly, we vacate Vinton's sentence and remand for resentencing. We direct that resentencing occur on the factual basis previously presented by the parties, as the facts relayed by the probation officer should not have been considered by the district court. *See United States v. Maldonado-Maldonado*, 178 F.4th 36, 44-45 (1st Cir. 2026) (stating the district court may generally engage in ex parte communications with the probation officer; however, the court may not rely on information shared during such a communication if it is not already found in the record and is significant or material to determining the defendant's sentence). Further, the government elected to proceed without seeking a continuance or presenting evidence in support of those facts. *See United States v. Johnson*, 710 F.3d 784, 790 (8th Cir. 2013) (generally, when the government knows of its obligation to present evidence and fails to do so, it may not enter new evidence on remand; limiting remand to the existing record where the government clearly understood its burden, did not seek a continuance or present evidence, and elected to proceed on the record as presented).