

United States Court of Appeals
For the Eighth Circuit

No. 26-2263

United States of America

Plaintiff - Appellee

v.

John Thomas German, Jr.

Defendant - Appellant

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

Submitted: October 14, 2026

Filed: October 15, 2026

[Unpublished]

Before STRAS, KOBES, and JUSTIN D. SMITH, Circuit Judges.

PER CURIAM.

John German appeals after the district court revoked his supervised release and sentenced him to 12 months in prison and two years of supervised release. The parties assert that the sentence should be vacated and the matter remanded, as the court relied on disputed facts in a supplemental presentence report (SPSR). We agree.

We conclude that the district court procedurally erred by relying on disputed facts in the SPSR for which the government presented no supporting evidence. See United States v. Richey, 758 F.3d 999, 1001-03 (8th Cir. 2014) (applying abuse-of-discretion review to revocation sentence for significant procedural errors; district court commits procedural error by basing revocation on disputed facts in presentence report, which is not evidence; once defendant disputes facts, government has burden to produce evidence supporting them); United States v. Balanga, 109 F.3d 1299, 1303-04 (8th Cir. 1997) (“Facts recited in a [presentence report], although hearsay, may be relied upon by a court unless they are in dispute.”). Because the court considered these facts shortly before pronouncing German’s sentence, we conclude the error was not harmless. See United States v. Moody, 930 F.3d 991, 993 (8th Cir. 2019) (this court will disregard harmless procedural error only if it is convinced error did not affect sentencing).

Accordingly, we vacate German’s sentence and remand for resentencing. We direct that resentencing occur on the existing record. See United States v. Johnson, 710 F.3d 784, 790 (8th Cir. 2013) (generally, when government knows of its obligation to present evidence and fails to do so, it may not enter new evidence on remand).¹

¹The case will not become moot upon German’s imminent release, as the district court retains discretion to shorten his term of supervised release. See United States v. Abu Nahia, 230 Fed. Appx. 641, 641 (8th Cir. 2007) (unpublished per curiam) (appellant’s release from prison did not render appeal of sentence moot as district court could exercise discretion to shorten supervised release term on remand).