

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-3080

United States of America,

Appellee,

v.

Juan Morales-Uribe,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: March 11, 2008

Filed: March 19, 2008

Before RILEY, GRUENDER and SHEPHERD, Circuit Judges.

PER CURIAM.

Juan Morales-Uribe appeals his sentence of 90 months' imprisonment that the district court imposed at resentencing. After the district court initially sentenced Morales-Uribe to 60 months' imprisonment, we vacated his sentence and remanded for resentencing. *United States v. Morales-Uribe*, 470 F.3d 1282 (8th Cir. 2006). We vacated the sentence because some of the factors that the district court relied upon in sentencing Morales-Uribe to 60 months' imprisonment, while appropriate, were not sufficient to support the substantial, 48-month variance from the bottom of the advisory sentencing guidelines range. *Id.* at 1285-86.

At resentencing, the district court adhered to our previous requirement that extraordinary variances required extraordinary circumstances. The Supreme Court now has “rejected ‘an appellate rule that requires “extraordinary” circumstances to justify a sentence outside the Guidelines range.’” *United States v. McGhee*, 512 F.3d 1050, 1051-52 (2008) (per curiam) (quoting *Gall v. United States*, 552 U.S. ---, 128 S. Ct. 586, 595 (Dec. 10, 2007)). “[W]e understand the Court’s opinion in *Gall* also to preclude a requirement of ‘extraordinary circumstances’ to justify an ‘extraordinary variance,’ for that was the only type of sentence outside the guidelines range to which this court had applied an ‘extraordinary circumstances’ requirement.” *Id.* at 1052. Therefore, we vacate Morales-Uribe’s sentence of 90 months’ imprisonment and remand for resentencing in light of *Gall*.
