

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-1142

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United States of America,

Appellee,

v.

Charles W. Poor Thunder,

Appellant.

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Appeal from the United States  
District Court for the  
District of South Dakota.

[UNPUBLISHED]

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Submitted: June 7, 2000

Filed: June 9, 2000

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Before RICHARD S. ARNOLD, BOWMAN, and BEAM, Circuit Judges.

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PER CURIAM.

Charles W. Poor Thunder, who originally pleaded guilty to conspiring to distribute controlled substances in violation of 21 U.S.C. §§ 841(a)(1) and 846 (1994), appeals the 48-month prison sentence he received upon revocation of his supervised release, arguing that imposition of this sentence was plain error. The government concurs, and advises that Poor Thunder's original offense of conviction--carrying a maximum prison term of 40 years, see 21 U.S.C. § 841(b)(1)(B) (Supp. IV 1998)--constituted a Class B felony, see 18 U.S.C. § 3559(a)(2) (1994). We agree with the parties that this case should be remanded for resentencing. See 18 U.S.C. § 3583(e)(3) (1994) (authorizing up to three years imprisonment upon revocation of supervised

release if offense that resulted in term of supervised release was class B felony); cf. United States v. Guzman-Bruno, 27 F.3d 420, 423 (9th Cir.) (vacating sentence as plain error, and remanding to district court for limited purpose of setting term of supervised release within statutorily-permitted range), cert. denied, 513 U.S. 975 (1994).

Accordingly, we vacate the sentence and remand for resentencing.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.