

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

No. 06-2866

United States of America,

Appellee,

v.

Robert Samuel Wilkinson,

Appellant.

*
*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
Northern District of Iowa
[UNPUBLISHED]

Submitted: February 20, 2008
Filed: April 16, 2008

Before WOLLMAN, MURPHY, and BYE, Circuit Judges.

PER CURIAM.

Following our affirmance of Wilkinson's sentence, United States v. Wilkinson, 225 Fed. Appx. 413 (8th Cir. 2007), the United States Supreme Court vacated our judgment and remanded the case for reconsideration in light of Gall v. United States, 128 S. Ct. 586 (2007). Wilkinson v. United States, 128 S. Ct. 1064 (2008).

Although we consider it to be a very close question, we conclude that, based upon the government's and the district court's comments at sentencing regarding the necessity of the existence of extraordinary circumstance as a prerequisite to a departure, the case should be remanded for resentencing in light of the Supreme

Court's disapproval of the restrictive views our court had expressed regarding a district court's discretion to depart below recommended Guideline sentences.

Accordingly, the sentence is vacated, and the case is remanded to the district court for resentencing. We, of course, express no view regarding the sentence to be imposed.
