

United States Court of Appeals
For the Eighth Circuit

No. 23-2605

United States of America

Plaintiff - Appellee

v.

Tyrelle Smiley

Defendant - Appellant

Appeal from United States District Court
for the District of Nebraska - Lincoln

Submitted: March 11, 2024

Filed: April 25, 2024

[Unpublished]

Before COLLTON, Chief Judge, ERICKSON and KOBES, Circuit Judges.

PER CURIAM.

Tyrelle Smiley went on a spree through several small towns in Nebraska, burgling churches, businesses, and a post office. After a stint in state prison for the church and business burglaries, he went straight into federal pre-trial custody and pleaded guilty to forcibly breaking into the post office with intent to commit a larceny or other depredation, 18 U.S.C. § 2115. The district court sentenced him to 30 months in prison, varying up from his Guidelines range of 18 to 24 months and

explaining that Smiley’s time in state prison had not deterred him, so his federal sentence needed to be incrementally higher to prevent him from striking again. See 18 U.S.C. § 3553(a)(2)(B).

On appeal, both Smiley and the Government argue that we should remand because the court varied up based on a clearly erroneous fact—that Smiley broke into the post office after he was released from state prison. We agree. The sentence is vacated, and we remand for resentencing. See United States v. Holmes, 192 F. App’x 583, 584 (8th Cir. 2006) (per curiam).
