

Oates argues that the district court failed to consider the policy statements addressing revocation of supervised release in Chapter 7 of the Sentencing Guidelines. The provisions in Chapter 7 are merely advisory and do not have binding effect. United States v. Carr, 66 F.3d 981, 983 (8th Cir. 1995) (per curiam). Nevertheless, district courts must consider these provisions before imposing sentence, as 18 U.S.C. § 3583(e)(3) directs district courts resentencing an offender after revocation of supervised release to consider the factors set forth in 18 U.S.C. § 3553(a), which in turn requires, among other things, that the court consider any applicable policy statements. United States v. Hensley, 36 F.3d 39, 41-42 (8th Cir. 1994). We believe remand is required here, because it is not clear whether the district court considered the Chapter 7 policy statements. See id. The court did not indicate that it relied on any statutory or Guidelines provision in imposing sentence, and neither the revocation-hearing transcript nor the district court docket sheet indicates whether the court considered the probation officer's Guidelines worksheet and sentencing recommendation.

If the district court in fact considered the policy statements in sentencing Oates, it may simply say so and reimpose sentence. Otherwise, the court should consider the policy statements along with other sentencing factors and, in the exercise of its discretion, then impose the sentence it finds proper, up to and including the statutory maximum terms of imprisonment.¹

Accordingly, we remand to the district court for resentencing.

¹On remand, the district court should also reconsider the concurrent sentence on the food-stamp conviction, as that conviction was a Class D felony subject to a maximum prison term of five years, and the maximum term for a Class D felony upon revocation of supervised release is two years. See 7 U.S.C. § 2024(b); 18 U.S.C. §§ 3559(a)(4), 3583(e)(3).

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Attest:

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