

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

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No. 07-3674

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United States of America,

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Appellee,

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v.

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Appeal from the United States

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District Court for the

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Southern District of Iowa.

Joel Edward Geyer, Sr., also known as

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Joel Geyer,

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[UNPUBLISHED]

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Appellant.

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Submitted: October 22, 2008

Filed: December 2, 2008

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Before MURPHY, BYE, and BENTON, Circuit Judges.

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PER CURIAM.

Joel Geyer challenges the prison sentence the district court imposed after he pleaded guilty to drug and firearm charges. At sentencing, the court determined that Geyer was a career offender, *see* U.S.S.G. § 4B1.1, because he had prior felony convictions for bank robbery and operating a motor vehicle while intoxicated (OWI). On appeal, Geyer argues that he should not have been classified as a career offender because his OWI conviction is not a “crime of violence.”

While this case was pending on appeal, the United States Supreme Court issued its decision in *Begay v. United States*, 128 S. Ct. 1581 (2008), holding that the crime

of driving under the influence is not a “violent felony” under the Armed Career Criminal Act (ACCA). *See id.* at 1583, 1588. Consequently, the district court improperly calculated Geyer’s advisory Guidelines range when it determined that his prior OWI conviction is a “crime of violence.” *See United States v. Williams*, 537 F.3d 969, 971 (8th Cir. 2008) (this court has never recognized distinction between “crime of violence” and “violent felony”); *United States v. Comstock*, 531 F.3d 667, 678-79 (8th Cir. 2008)(rehearing denied) (OWI convictions are not ACCA “violent felonies”); *see also Gall v. United States*, 128 S. Ct. 586, 594, 596-97 (2007) (as part of reasonableness review, appellate court must first ensure that district court committed no significant procedural error, such as improperly calculating Guidelines range).

Accordingly, we vacate the sentence and remand for resentencing.

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