

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-3721

United States of America,	*
	*
Appellee,	* Appeal from the United States
	* District Court for the
v.	* Eastern District of Arkansas.
	*
Darryl Walker,	* [UNPUBLISHED]
	*
Appellant.	*

Submitted: March 6, 2009
Filed: March 17, 2009

Before RILEY, SMITH, and BENTON, Circuit Judges.

PER CURIAM.

Darryl Walker appeals the sentence the district court¹ imposed after he pled guilty to a firearm offense. On appeal, Walker seeks a remand for resentencing in light of the Supreme Court's decisions in *Kimbroough v. United States*, 128 S. Ct. 558 (2007), and *Gall v. United States*, 128 S. Ct. 586 (2007), both decided after his sentencing. We decline to remand for resentencing, and we affirm.

¹The Honorable William R. Wilson, Jr., United States District Judge for the Eastern District of Arkansas.

We find nothing in *Kimbrough* to warrant a remand for resentencing. *See Kimbrough*, 128 S. Ct. at 564 (holding that cocaine Guidelines, like all other Guidelines, are advisory only); *United States v. Roberson*, 517 F.3d 990, 995 (8th Cir. 2008) (*Kimbrough* held that sentencing court did not abuse its discretion by considering disparity between crack and powder cocaine sentences). Likewise, we conclude that a remand under *Gall* is not required because there is no indication in the record that the district court applied an “extraordinary circumstances” standard. *See Gall*, 128 S. Ct. at 594-95 (rejecting appellate court’s requirement of extraordinary circumstances to support extraordinary variance, but allowing court to take degree of variance into account and consider extent of deviation from Guidelines).

We also conclude that Walker’s sentence is not substantively unreasonable. *See United States v. Phelps*, 536 F.3d 862, 869 (8th Cir. 2008) (defendant does not forfeit attack on substantive reasonableness of sentence by failing to object in district court; substantive reasonableness of sentence is reviewed for abuse of discretion), *cert. denied*, 2009 WL 177236 (U.S. Feb. 23, 2009); *United States v. Long Soldier*, 431 F.3d 1120, 1123 (8th Cir. 2005) (abuse of discretion occurs if court fails to consider relevant factor that should have received significant weight, gives significant weight to improper or irrelevant factor, or considers only appropriate factors but commits clear error of judgment in weighing factors).

The judgment of the district court is affirmed.
