

United States Court of Appeals
For the Eighth Circuit

No. 21-2435

United States of America

Plaintiff - Appellee

v.

David M. Foston, also known as Max, also known as Prez

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: April 15, 2022

Filed: May 13, 2022

[Unpublished]

Before COLLOTON, MELLOY, and GRUENDER, Circuit Judges.

PER CURIAM.

David M. Foston appeals his sentence for conspiring to distribute cocaine in violation of 21 U.S.C. § 846, arguing that the district court¹ erred in classifying him as a career offender. At sentencing, the district court stated that it “would still

¹The Honorable Audrey G. Fleissig, United States District Judge for the Eastern District of Missouri.

impose [the same] sentence” even if Foston did not qualify as a career offender. Thus, even assuming *arguendo* that the district court erred in classifying Foston as a career offender, the error was harmless and does not provide a basis to remand for resentencing. *See United States v. Davis*, 583 F.3d 1081, 1095 (8th Cir. 2009) (“Because the district court explicitly stated it would have imposed a sentence of 293 months imprisonment regardless of whether [the defendant] was a career offender, any error on the part of the district court is harmless, and we affirm.”). Accordingly, we affirm Foston’s sentence.
