

United States Court of Appeals  
For the Eighth Circuit

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No. 23-2780

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United States of America

*Plaintiff - Appellee*

v.

Vincent Neil Strauser

*Defendant - Appellant*

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Appeal from United States District Court  
for the Northern District of Iowa - Eastern

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Submitted: April 17, 2024

Filed: April 22, 2024

[Unpublished]

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Before SHEPHERD, STRAS, and KOBES, Circuit Judges.

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PER CURIAM.

Vincent Strauser appeals the sentence imposed by the district court after he pleaded guilty to drug and firearm offenses. Upon careful review, we conclude the district court erred in determining that Strauser qualified as a career offender. Specifically, Strauser's 2011 marijuana conviction did not qualify as a predicate offense because--although Strauser received a 2-year sentence for the offense--the

statute of conviction stated that it was not punishable by more than 1 year in prison. See Iowa Code §§ 124.410; 124.401(5)(b) (6-month maximum term of imprisonment); U.S.S.G. § 4B1.2 comment. (n.1) (prior felony conviction means a prior conviction punishable by a term exceeding 1 year in prison regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed); United States v. Keith, 638 F.3d 851, 852-53 (8th Cir. 2011) (the word “punishable” makes clear that the focus is on the prison sentence that may be imposed under state law, regardless of the actual sentence imposed); United States v. Turner, 781 F.3d 374, 393 (8th Cir. 2015) (construction and application of Guidelines are reviewed de novo; factual findings are reviewed for clear error). Because the record does not make clear that the district court would have imposed the same sentence without the career offender classification, we conclude that the error was not harmless. United States v. Holder, 981 F.3d 647, 651 (8th Cir. 2020) (while some Guidelines errors may be harmless, courts of appeals should not make assumptions as to what district court might have done had it considered the correct Guidelines range).

Accordingly, we vacate Strauser’s sentence and remand to the district court for resentencing.

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