

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-6125

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PATRICK L. TOPPER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., District Judge. (CR-97-250, CA-99-4225-6)

Submitted: April 13, 2000

Decided: April 21, 2000

Before WIDENER and WILKINS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Patrick L. Topper, Appellant Pro Se. Harold Watson Gowdy, III, OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Patrick L. Topper seeks to appeal the district court's order denying his motion to modify his sentence, which the district court properly construed as one filed under 28 U.S.C.A. § 2255 (West Supp. 1999). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court.* See United States v. Topper, Nos. CR-97-250; CA-99-4225-6 (D.S.C. Dec. 27, 1999). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

* We note that the district court's order on page 2 is incorrect as to the guideline range that would apply if Topper qualified for a two-level decrease under U.S. Sentencing Guidelines Manual § 2D1.1(b)(5), and it also mistakenly states that the court departed downwardly under USSG § 5K1.1, rather than reduced the sentence under Fed. R. Crim. P. 35(b). However, these errors are not material to the court's decision and are therefore harmless.