

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 00-6570**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHN LEE COBBS,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert E. Payne, District Judge. (CR-95-193, CA-99-1657-2)

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Submitted: September 29, 2000

Decided: October 19, 2000

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Before WILKINS, MOTZ, and TRAXLER, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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John Lee Cobbs, Appellant Pro Se. Laura P. Tayman, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

John Lee Cobbs seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). We have reviewed the record and the district court's opinion and find no reversible error. Moreover, as to Cobbs' claim that he was denied effective assistance of counsel on direct appeal, because he did not first present this claim to the district court, and because he has not demonstrated plain error or a miscarriage of justice, he is entitled to no relief upon this claim. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). Finally, we conclude that any error in Cobbs' sentence, in light of the Supreme Court's recent decision in Apprendi v. New Jersey, 530 U.S. \_\_\_\_, 120 S. Ct. 2348 (2000), is harmless. See United States v. Nordby, \_\_ F.3d \_\_\_\_, 2000 WL 1277211, at \*6 (9th Cir. Sept. 11, 2000) (No. 99-10191).

Accordingly, we deny a certificate of appealability and dismiss the appeal substantially on the reasoning of the district court. See United States v. Cobbs, Nos. CR-95-193; CA-99-1657-2 (E.D. Va. Mar. 17, 2000). 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