

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-6621

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHN BARNHARDT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (CR-96-104-A, CA-98-631-AM)

Submitted: November 30, 2000

Decided: December 6, 2000

Before NIEMEYER, LUTTIG, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John Barnhardt, Appellant Pro Se. Helen F. Fahey, United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

John Barnhardt 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.* Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. See United States v. Barnhardt, Nos. CR-96-104-A; CA-98-631-AM (E.D. Va. Mar. 23, 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

* Barnhardt alleges for the first time on appeal that his sentence was illegal under Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). Even if this claim were properly before the court, Barnhardt was not sentenced above the statutory maximum for the offense of conviction without regard to drug quantity. As a result, the sentence does not implicate the concerns raised in Apprendi. See United States v. Angle, 230 F.3d 113 (4th Cir. 2000), petition for rehearing filed, Oct. 26, 2000 (No. 96-4662).