

OPINION ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-6719

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID EARL BEASLEY,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (CR-94-122-F, CA-98-810-5-F)

Submitted: April 27, 2001

Decided: May 7, 2001

Before MOTZ and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

David Earl Beasley, Appellant Pro Se. Fenita Morris Shepard, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Earl Beasley appeals 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 substantially on the reasoning of the district court. See United States v. Beasley, Nos. CR-94-122-F; CA-98-810-5-F (E.D.N.C. Sept. 28, 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 previously granted Beasley's petition for rehearing and placed his appeal in abeyance for United States v. Jones, No. 00-7249. We recently held, however, in United States v. Sanders, ___ F.3d ___, 2001 WL 369719 (4th Cir. Apr. 13, 2001) (No. 00-6281), that the new rule announced in Apprendi v. New Jersey, 530 U.S. 466 (2000), is not retroactively applicable to cases on collateral review. Accordingly, the Apprendi claim Beasley asserted for the first time in his petition for rehearing in this appeal is not cognizable. We therefore remove this appeal from abeyance because we conclude Sanders is dispositive of Beasley's Apprendi claim.