

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7251

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KELVIN O'NEIL KENNEDY,

Defendant - Appellant.

Appeal from the United States District Court for the District of
South Carolina, at Florence. C. Weston Houck, District Judge.
(CR-94-297, CA-98-850-4-12)

Submitted: January 18, 2001

Decided: January 25, 2001

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

Dismissed by unpublished per curiam opinion.

Kelvin O'Neil Kennedy, Appellant Pro Se. Marshall Prince, OFFICE
OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Kelvin O'Neil Kennedy 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.* We note, however, that the court deemed the motion untimely filed under the Antiterrorism and Effective Death Penalty Act. We find that it was timely filed on March 27, 1998. However, the district reviewed the claims raised on their merits, thus the motion was properly reviewed. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. United States v. Kennedy, Nos. CR-94-297; CA-98-850-4-12 (D.S.C. July 31, 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

* Kennedy 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 was properly before the court, Kennedy was not sentenced above the statutory maximum for the offense of conviction. As a result, the sentence does not implicate the concerns raised in Apprendi. United States v. Angle, 230 F.3d 113 (4th Cir. 2000), petition for rehearing filed, Oct. 26, 2000 (No. 96-4662).