

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
v.  
CLARK PROCTOR, JR.,  
*Defendant-Appellant.*

No. 01-4015

Appeal from the United States District Court  
for the Western District of North Carolina, at Asheville.  
Lacy H. Thornburg, District Judge.  
(CR-00-6)

Submitted: April 25, 2002

Decided: May 6, 2002

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

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

Phillip E. Lewis, MATTHEWS LAW FIRM, Hickory, North Carolina, for Appellant. Robert J. Conrad, Jr., United States Attorney, Thomas R. Ascik, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

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### OPINION

#### PER CURIAM:

Clark Proctor, Jr., appeals his sentence for conspiracy to possess cocaine base with the intent to distribute and possession of cocaine base with intent to distribute, in violation of 21 U.S.C.A. §§ 841, 846 (West 1999 & Supp. 2001). Finding no error, we affirm Proctor's sentence.

Proctor contends his concurrent 360-month sentences are invalid under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). However, Proctor's sentence is not above the thirty year statutory maximum of § 841(b)(1)(C) applicable where the defendant has at least one qualifying prior conviction. See *United States v. Dinnall*, 269 F.3d 418 (4th Cir. 2001); *United States v. Promise*, 255 F.3d 150 (4th Cir. 2001) (en banc), *petition for cert. filed*, (U.S. Sept. 20, 2001) (No. 01-6398). Moreover, contrary to Proctor's contention, *Apprendi* does not apply to judicial fact finding under the guidelines. *United States v. Kinter*, 235 F.3d 192, 199-201 (4th Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 121 S. Ct. 1393 (2001). Thus, we find *Apprendi* is not implicated and affirm Proctor's sentence.

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.

*AFFIRMED*