

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. DOTTIE NIXON, a/k/a Dorothy Nixon, <i>Defendant-Appellant.</i>

No. 01-4662

Appeal from the United States District Court
for the Western District of North Carolina, at Statesville.
Richard L. Voorhees, District Judge.
(CR-99-70)

Submitted: April 22, 2002

Decided: May 23, 2002

Before WILKINS, LUTTIG, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Randolph M. Lee, Charlotte, North Carolina, for Appellant. Gretchen C.F. Shappert, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Dottie Nixon appeals her sentence, imposed pursuant to a guilty plea, for conspiracy to possess with intent to distribute and to distribute cocaine base within 1000 feet of a school, in violation of 21 U.S.C. §§ 841(a)(1), 846, 860 (1994). Finding no error, we affirm Nixon's sentence.

Nixon contends her 360-month sentence is invalid under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Because Nixon's sentence is not above the forty year statutory maximum of § 860, we find *Apprendi* is not implicated. 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).

Nixon also contends the district court erred in calculating her sentencing guidelines range. We find no error in the district court's determination of Nixon's sentencing guidelines range. We therefore affirm Nixon'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