

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-6350**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GARY M. MILLIGAN,

Defendant - Appellant.

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Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Chief District Judge. (CR-96-437-JFM, CA-00-513-JFM)

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Submitted: June 21, 2001

Decided: June 29, 2001

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

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Dismissed by unpublished per curiam opinion.

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Gary M. Milligan, Appellant Pro Se. Joseph Lee Evans, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Gary M. Milligan appeals the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2000) motion. On appeal, Milligan only contests the district court's order insofar as it concluded that the United States had jurisdiction to prosecute Milligan for arson in violation of 18 U.S.C.A. § 844(i) (West 2000). Specifically, Milligan contends that the indictment failed to sufficiently allege a nexus between the arson and interstate commerce. We find that claim flatly contradicted by the indictment. To the extent that Milligan contends that the prosecution failed to adequately prove the interstate commerce nexus, Milligan pled guilty, and thus admitted the material elements of the offense. McCarthy v. United States, 394 U.S. 459, 466 (1969). Accordingly, we deny a certificate of appealability and dismiss the appeal.\* 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

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\* Although we dismiss the appeal, we deny the Government's motion to dismiss, which is premised on the district court's denial of Milligan's motion for certificate of appealability. Pursuant to Fed. R. App. P. 22(b), we may consider a request for a certificate of appealability even if the district court denied a certificate. In the absence of an express motion in this court, a notice of appeal serves as a motion for a certificate of appealability. Thus, the district court's denial of Milligan's motion for a certificate of appealability is not dispositive of the appeal.