

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-6493

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM PATRICK MILLER, a/k/a Scoop,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CR-98-7-MU)

Submitted: June 12, 2001

Decided: June 21, 2001

Before LUTTIG, WILLIAMS, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William Patrick Miller, Appellant Pro Se. Gretchen C.F. Shappert, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

William Patrick Miller appeals the district court's order denying his motion filed under Fed. R. Crim. P. 33, in which he sought a new trial based upon newly discovered evidence. We have reviewed the record and the district court's opinion and find no abuse of discretion. United States v. Christy, 3 F.3d 765, 768 (4th Cir. 1993) (stating standard of review). Accordingly, we affirm on the reasoning of the district court. United States v. Miller, No. CR-98-7-MU (W.D.N.C. filed Feb. 15, 2001; entered Feb. 16, 2001).

Miller also asserts for the first time on appeal that he is entitled to a new trial on drug quantity in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). We reject his claim because there is no error, plain or otherwise, given that Miller received a 235-month sentence. See United States v. White, 238 F.3d 537, 542 (4th Cir. 2001) (noting that statutory maximum is twenty years when drug quantity is not charged as element of offense and found by jury beyond a reasonable doubt), cert. denied, ___ U.S. ___, 2001 WL 487738 (U.S. June 4, 2001) (No. 00-9732). 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