

UNPUBLISHED

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

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>
v.
TOMMY LEE McBRIDE, <i>Defendant-Appellant.</i>

No. 01-6634

Appeal from the United States District Court
for the Middle District of North Carolina, at Winston-Salem.
Frank W. Bullock, Jr., District Judge.
(CR-96-264, CA-00-239-1)

Submitted: March 27, 2002

Decided: April 15, 2002

Before WIDENER, NIEMEYER, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Tommy Lee McBride, Appellant Pro Se. Paul Alexander Weinman, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Tommy Lee McBride seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2001). He also seeks to appeal the magistrate judge's denial of his motions to amend the § 2255 motion in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and to expand the record. We have reviewed the record and the district court's order accepting the recommendation of the magistrate judge and find no reversible error in the denial of § 2255 relief. In addition, we note that McBride failed to show cause and prejudice under *United States v. Frady*, 456 U.S. 152, 167-68 (1982), to excuse his failure to raise on direct appeal his claim under *United States v. Rhynes*, 196 F.3d 207 (4th Cir. 1999), *vacated in part on other grounds*, 218 F.3d 310 (4th Cir.) (en banc), *cert. denied*, 530 U.S. 1222 (2000).

Nor do we find any error in the magistrate judge's denial of the motion to expand the record or the motion to amend. Even assuming that McBride's *Apprendi* claims related back to the timely filing of his § 2255 motion, we have held that *Apprendi* does not apply retroactively to cases on collateral review. *United States v. Sanders*, 247 F.3d 139, 151 (4th Cir.), *cert. denied*, 122 S. Ct. 573 (2001).

Accordingly, we deny a certificate of appealability and dismiss the appeal substantially on the reasoning of the district court and magistrate judge. *United States v. McBride*, Nos. CR-96-264; CA-00-239-1 (M.D.N.C. filed Mar. 28, 2001; entered Mar. 29, 2001). 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