

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. FREDERICK MAURICE BRYANT, <i>Defendant-Appellant.</i>

No. 01-6908

Appeal from the United States District Court
for the District of South Carolina, at Greenville.
Dennis W. Shedd, District Judge.
(CR-97-128, CA-00-3196-6-19)

Submitted: September 20, 2001

Decided: October 2, 2001

Before LUTTIG, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Frederick Maurice Bryant, Appellant Pro Se. E. Jean Howard,
OFFICE OF THE UNITED STATES ATTORNEY, Greenville,
South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Frederick Maurice Bryant seeks to appeal the district court's orders denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2001) and his motion for reconsideration. We have reviewed the record and find no reversible error. Specifically, Bryant's claim that his conviction and sentence were invalid under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), fails because his eighty-four month sentence was below the statutory maximum. *United States v. Kinter*, 235 F.3d 192, 199-202 (4th Cir. 2000), *cert. denied*, 69 U.S.L.W. 3618 (U.S. Mar. 19, 2001) (No. 00-8591). In any event, Bryant's *Apprendi* claim is procedurally defaulted because he did not raise it on direct appeal and fails to show cause and prejudice for this omission or actual innocence. *United States v. Sanders*, 247 F.3d 139, 144-46 (4th Cir. 2001). We also find Bryant's claim that counsel was ineffective at sentencing for failing to argue that Bryant should be sentenced based on powder cocaine instead of crack to be meritless in light of his acknowledgment at the plea hearing that he conspired to traffic in crack. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984) (establishing standards for ineffective assistance of counsel); *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (stating that representations made by defendant at plea hearing present formidable barrier to habeas corpus relief); *Little v. Allsbrook*, 731 F.2d 238, 239-40 n.2 (4th Cir. 1984) (holding defendant is bound by statements at plea hearing absent clear and convincing contrary evidence). 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