

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7018

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TERRY ANTONIO LEATH,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (CR-97-78, CA-00-730-1)

Submitted: September 6, 2001

Decided: September 14, 2001

Before WIDENER, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Terry Antonio Leath, Appellant Pro Se. Angela Hewlett Miller, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Terry Antonio Leath seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). We have reviewed the record and the district court's opinion accepting the recommendation of the magistrate judge and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal substantially on the reasoning of the district court.* See United States v. Leath, Nos. CR-97-78; CA-00-730-1 (M.D.N.C. May 17, 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

* We note that Leath's claim that his sentence violates the holding in Apprendi v. New Jersey, 530 U.S. 466 (2000), is foreclosed in light of our recent determination that Apprendi is not retroactively applicable to cases on collateral review. See United States v. Sanders, 247 F.3d 139 (4th Cir. 2001).