

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. KEVIN JASON SHERRILL, <i>Defendant-Appellant.</i>

No. 01-7045

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
Alexander Williams, Jr., District Judge.
(CR-99-119, CA-01-30-AW)

Submitted: December 13, 2001

Decided: January 3, 2002

Before WILLIAMS, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Paul Howard Zukerberg, Washington, D.C., for Appellant. Mythili Raman, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Kevin Jason Sherrill seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2001). We have reviewed the record and the district court's opinion and find no reversible error. The district court correctly determined that Sherrill waived his right to challenge the calculation of his sentence in this § 2255 proceeding. Further, although the court erred in concluding that the ineffective assistance claim was foreclosed by Sherrill's failure to raise it on direct appeal, *see United States v. DeFusco*, 949 F.2d 114, 120 (4th Cir. 1999) (declining to consider ineffective assistance claim on direct appeal), such error was harmless because Sherrill did not establish counsel's ineffectiveness as defined in *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Finally, because the discrepancy between Sherrill's affidavit and that of his counsel only involved whether Sherrill threatened to raise an ineffective assistance claim, and did not go to counsel's effectiveness, the district court did not err in declining to add a hearing to resolve the discrepancy. 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