

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-7438**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CLIFTON WARREN SMITH,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CR-97-75, CA-01-950-AM)

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Submitted: November 8, 2001

Decided: November 20, 2001

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Before WILKINS, MICHAEL, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Clifton Warren Smith, Appellant Pro Se. Glenn Cameron Alexander, Laura Haas Parsky, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Clifton Warren Smith 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. Smith contends on appeal that counsel did not inform him of the basis for the 1997 dismissal of his direct appeal until October 2000. Even if his discovery of the basis for dismissal could be considered newly discovered evidence, Smith did not exercise due diligence in obtaining that evidence, so he has not satisfied the timeliness requirements of 28 U.S.C.A. § 2255. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. See United States v. Smith, Nos. CR-97-75; CA-01-950-AM (E.D. Va. July 24, 2001); see also United States v. Sanders, 247 F.3d 139, 151 (4th Cir. 2001) (holding that claims under Apprendi v. New Jersey, 530 U.S. 466 (2000), are not cognizable in proceedings pursuant to 28 U.S.C.A. § 2255). 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