

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 02-6947**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BRIAN LINTON, a/k/a Bee,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. Malcolm J. Howard, District Judge. (CR-95-41-H)

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Submitted: November 21, 2002

Decided: December 3, 2002

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Before LUTTIG and WILLIAMS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Brian Linton, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Brian Linton, a federal prisoner, seeks to appeal the district court's order denying relief on the merits on his motion filed under 28 U.S.C. § 2255 (2000). We have reviewed the record and conclude that because Linton failed to timely file his § 2255 motion, see 28 U.S.C. § 2244(d) (2000), he is not entitled to relief under § 2255. Moreover, we find that Linton is not entitled to a certificate of appealability. See generally Slack v. McDaniel, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(1) (2000). Accordingly, we deny a certificate of appealability and dismiss the appeal. Because the appeal presents no complex or substantial issues, we deny Linton's motion for appointment of counsel. 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