

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-6317**

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JERRY J. ANDERSON,

Petitioner - Appellant,

versus

STEVEN GAL, Warden of FCI - Estill; UNITED  
STATES OF AMERICA,

Respondents - Appellees.

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Appeal from the United States District Court for the District of  
South Carolina, at Charleston. C. Weston Houck, Senior District  
Judge. (CA-01-3895-2-12)

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Submitted: May 27, 2004

Decided: June 3, 2004

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Before WIDENER, MICHAEL, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Jerry J. Anderson, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jerry J. Anderson, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his petition filed under 28 U.S.C. § 2241 (2000). As the district court recognized, the fact that Anderson's petition could not proceed under 28 U.S.C. § 2255 (2000) does not necessarily render that section inadequate so as to permit Anderson to proceed under § 2241. See In re Vial, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997). Moreover, the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), upon which Anderson's claim is based, is not retroactively applicable in § 2241 petitions. See San-Miguel v. Dove, 291 F.3d 257, 260-61 & n.2 (4th Cir.), cert. denied, 537 U.S. 938 (2002). Accordingly, we affirm the district court's decision. 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.

AFFIRMED