

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7342

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

NICHOLAS ERIC TURNER,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, District Judge. (CR-02-79; CA-03-993-1)

Submitted: November 24, 2004

Decided: December 7, 2004

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

Dismissed by unpublished per curiam opinion.

Nicholas Eric Turner, 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Unpublished opinions are not binding precedent in this circuit.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:

Nicholas Eric Turner seeks to appeal the district court's order accepting the report and recommendation of a magistrate judge and denying his motion filed under 28 U.S.C. § 2255 (2000) in which he claimed ineffective assistance of counsel for failure to file a direct appeal. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss this appeal on the reasoning of the district court. See United States v. Turner, No. CR-02-79 (M.D.N.C. May 28, 2004).

Turner asserted two additional claims for the first time in his appeal to this court: (1) he does not meet the enhancement requirements necessary to be labeled an armed criminal under 18 U.S.C. § 924(e)(1) (2000); and (2) an amendment to the United States Sentencing Guidelines changed the rules allowing enhancements under 18 U.S.C. §§ 922(g), 924(c) (2000). Because neither claim was raised in the district court, Turner may not raise them now on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). Accordingly, we deny a certificate of appealability and dismiss as to those claims as well.

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