

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-6004

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HERBERT J. ROTHBERG,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, District Judge. (CR-90-405-A, CA-95-655-AM)

Submitted: September 20, 1996

Decided: October 3, 1996

Before NIEMEYER, HAMILTON, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Gregory B. English, ENGLISH & SMITH, Alexandria, Virginia, for Appellant. Helen F. Fahey, United States Attorney, David G. Barger, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Herbert J. Rothberg seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (1994) motion. Specifically, Rothberg claims that the district court committed reversible error by dismissing the motion without the benefit of an evidentiary hearing. See Rules Governing § 2255 Proceedings, Rule 8. A district court need not conduct such a hearing where the facts are not in dispute. See, e.g., Foster v. Barbour, 613 F.2d 59, 60-61 (4th Cir. 1980). Rothberg has not identified any factual dispute that could have been resolved at a hearing and our review of the record reveals none. The district court did not err in dismissing the motion without a hearing. 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