

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 96-6100**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTONIO WILSON,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CR-92-35-H, CA-95-790-5-H)

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Submitted: September 20, 1996

Decided: October 3, 1996

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Before NIEMEYER, HAMILTON, and MOTZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Antonio Wilson, Appellant Pro Se. Robert Edward Skiver, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals from the district court's order denying his 28 U.S.C. § 2255 (1994) motion. We have reviewed the record and the district court's opinion and find no reversible error. Appellant's claims of ineffective assistance of counsel are without merit. See Strickland v. Washington, 466 U.S. 668 (1984). There is no basis for Appellant's contention that the district court amended the indictment through its jury instructions. Further, there is no support for the claim that this application of 21 U.S.C. § 841(a)(1) (1994) was unconstitutional. See United States v. Atkinson, 513 F.2d 38 (4th Cir. 1975). Consequently, counsel cannot have been ineffective for his failure to pursue these claims. See Fitzgerald v. Thompson, 943 F.2d 463 (4th Cir. 1991), cert. denied, 502 U.S. 1112 (1992). 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