

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-7699

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BARRY MCCORMICK,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CR-94-39-H, CA-96-632-5-H)

Submitted: July 24, 1997

Decided: July 31, 1997

Before HAMILTON, LUTTIG, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Barry McCormick, Appellant Pro Se. Bruce Charles Johnson, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997). 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 the appeal. We note that the record reveals no error of constitutional magnitude with regard to Appellant's counsel's decision not to argue that Appellant was entitled to be sentenced for distribution of powdered cocaine as opposed to crack cocaine. See Strickland v. Washington, 466 U.S. 668 (1984). 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