

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-4393**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

OSCAR MILLER, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Malcolm J. Howard, District Judge. (CR-97-67-H)

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Submitted: November 30, 2001

Decided: December 18, 2001

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Before WIDENER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Thomas P. McNamara, Federal Public Defender, G. Alan DuBois, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. John Stuart Bruce, United States Attorney, Anne M. Hayes, 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Unpublished opinions are not binding precedent in this circuit.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:

Oscar Miller appeals his sentence to 240 months' incarceration following his guilty plea and conviction of distribution of cocaine base, in violation of 21 U.S.C.A. § 841(a)(1) (West 2000). Because §§ 841 and 846 are not rendered unconstitutional by Apprendi v. New Jersey, 530 U.S. 466 (2000), which is the sole issue Miller asserts on appeal, we affirm Miller's conviction and sentence. See United States v. McAllister, \_\_\_ F.3d \_\_\_, 2001 WL 1387341, at \*3, (4th Cir. Nov. 8, 2001) (No. 00-4423). 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