

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-6275

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JEFFREY LYNN MYERS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (CR-90-10-ST-V, CA-97-2-5-V)

Submitted: April 27, 2001

Decided: May 7, 2001

Before LUTTIG and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jeffrey Lynn Myers, Appellant Pro Se. Harry Thomas Church, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jeffrey Myers appeals the district court's order dismissing his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). 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 on the reasoning of the district court.* See United States v. Myers, Nos. CR-90-10-ST-V; CA-97-2-5-V (W.D.N.C. filed Nov. 29, 2000; entered Dec. 5, 2000). 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

* Myers alleges on appeal for the first time that he was sentenced in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000). We recently held in United States v. Sanders, ___ F.3d ___, 2001 WL 369719 (4th Cir. Apr. 13, 2001) (No. 00-6281), that the new rule announced in Apprendi is not retroactively applicable to cases on collateral review. Accordingly, Myers' Apprendi claim is not cognizable.