

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-6380**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SERGIO BARRIOS,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CR-97-249-A)

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Submitted: September 18, 2001

Decided: October 16, 2001

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Before WILLIAMS and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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E. Blair Brown, Alexandria, Virginia, for Appellant. Kenneth E. Melson, United States Attorney, James L. Trump, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Sergio Barrios appeals the district court's order ruling on his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2001). Barrios contends that the district court erred in considering in the same proceeding both Barrios' motion to vacate under § 2255 and the Government's motion for reduction of sentence under Fed. R. Crim. P. 35. Barrios asserts that he would have ended up with a lower sentence if the district court had first considered his § 2255 claims that he was entitled to relief under Apprendi v. New Jersey, 530 U.S. 466 (2000), and then reduced his sentence in a separate proceeding under Rule 35.

We have recently held that the Apprendi ruling is not applicable retroactively to cases on collateral review. United States v. Sanders, 247 F.3d 139, 151 (4th Cir. 2000). Therefore, Barrios is entitled to no relief under Apprendi. In addition, we conclude that the district court did not abuse its discretion in deciding to depart downward to the extent it did.

Barrios has filed a pro se, supplemental brief. Our review of these claims convinces us that the issues raised therein entitle him to no relief. We affirm the decision of the district court. 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