

UNPUBLISHED  
**UNITED STATES COURT OF APPEALS**  
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
v.  
HENRY WESLEY CHISOLM,  
*Defendant-Appellant.*

No. 01-6992

Appeal from the United States District Court  
for the District of South Carolina, at Rock Hill.  
Joseph F. Anderson, Jr., Chief District Judge.  
(CA-01-3-0)

Submitted: October 31, 2001

Decided: November 28, 2001

Before WILKINS, MOTZ, and GREGORY, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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**COUNSEL**

Henry Wesley Chisolm, Appellant Pro Se. Marshall Prince, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

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**OPINION**

## PER CURIAM:

Henry Wesley Chisolm appeals the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2001). Finding no reversible error, we dismiss the appeal.

In his motion, Chisolm contended his counsel was ineffective in several respects. We have reviewed the record and the district court's opinion considering this claim and find no reversible error.

Chisolm also contends, for the first time on appeal, that his sentence violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and that his counsel was ineffective for failing to note the violation. Because Chisolm failed to raise these claims in the district court and does not demonstrate exceptional circumstances, we decline to address them. *See Muth v. United States*, 1 F.3d 246, 250 (4th Cir. 1993); *First Va. Banks, Inc. v. BP Exploration & Oil, Inc.*, 206 F.3d 404, 407 n.1 (4th Cir. 2000).\*

Accordingly, we deny a certificate of appealability and dismiss the appeal substantially on the reasoning of the district court. *See United States v. Chisolm*, No. CA-01-3-0 (D.S.C. Apr. 18, 2001). 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*

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\*Moreover, had Chisolm's *Apprendi* claim been raised below, it would still fail, as his 100 month sentence did not exceed the applicable statutory maximum and he could not properly raise the claim initially on collateral review. *See United States v. Promise*, 255 F.3d 150, 156 (4th Cir. 2001) (en banc) (holding statutory maximum is twenty years when drug quantity is not charged as element of offense and found by jury beyond a reasonable doubt); *see also United States v. Sanders*, 247 F.3d 139 (4th Cir. 2001) (holding Supreme Court has not yet made *Apprendi* retroactive to cases on collateral review).