

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-7698**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOSE PENALOZA RODRIGUEZ,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (CR-99-287, CA-01-299-1)

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Submitted: March 21, 2002

Decided: March 27, 2002

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Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Jose Penaloza Rodriguez, Appellant Pro Se. Steven Hale Levin, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jose Penaloza Rodriguez seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2001). We have reviewed the record and the district court's opinion accepting the magistrate judge's recommendation and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court.\* United States v. Rodriguez, Nos. CR-99-287; CA-01-229-1 (M.D.N.C. Aug. 20, 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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\* In addition to the claims he raised in the district court, on appeal Rodriguez alleges prosecutorial misconduct and breach of his plea agreement. Because he failed to present these claims to the district court, we decline to address them. Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (holding that claims raised for the first time on appeal will not be considered absent exceptional circumstances).