

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7857

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TONYA LUTISSUE MCNEIL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (CR-96-194-FO, CA-01-535-5-F)

Submitted: July 17, 2002

Decided: August 1, 2002

Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tonya Lutissue McNeil, Appellant Pro Se. John Howarth Bennett, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Tonya Lutissue McNeil seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2002). 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 substantially on the reasoning of the district court.* See United States v. McNeil, Nos. CR-96-194-FO; CA-01-535-5-F (E.D.N.C. filed Sept. 5, 2001; entered Sept. 6, 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

* We note that the district court did not have the benefit of our recent decision in Hill v. Braxton, 277 F.3d 701, 707 (4th Cir. 2002) (holding that a district court must give a petitioner notice and an opportunity to respond before dismissing his claims as untimely under the AEDPA), in rendering its decision. We therefore express no opinion as to the timeliness of McNeil's motion, but affirm on the district court's alternative finding that McNeil is not substantively entitled to relief under Apprendi v. New Jersey, 530 U.S. 466 (2000).