

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7610

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BRIAN LINTON, a/k/a Bee,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. Malcolm J. Howard, District Judge. (CR-95-41-H)

Submitted: January 22, 2003

Decided: January 30, 2003

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

Dismissed by unpublished per curiam opinion.

Brian Linton, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Brian Linton, a federal prisoner, seeks to appeal the district court's order denying relief on the merits on his "motion to vacate the conviction and sentence based on defective indictment," which motion is properly construed pursuant to 28 U.S.C. § 2255 (2000). We have reviewed the record and conclude that because Linton failed to obtain authorization to file a second or successive application for writ of habeas corpus before filing his motion in the district court, see 28 U.S.C. § 2244(b)(3)(A), he is not entitled to relief under § 2255. Moreover, we find that Linton is not entitled to a certificate of appealability. See generally Slack v. McDaniel, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(1) (2000). Accordingly, we deny a certificate of appealability and dismiss the appeal. 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