

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-7949

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CLARENCE EDWARD HAYNES,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CR-90-30-A, CA-95-1109-AM)

Submitted: March 19, 1996

Decided: March 28, 1996

Before ERVIN and WILLIAMS, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Clarence Edward Haynes, Appellant Pro Se. Bernard James Apperson, III, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals from the district court's order denying his 28 U.S.C. § 2255 (1988) motion. Appellant's claim that the rule of lenity should be applied in sentencing for crack cocaine offenses is without merit. See United States v. Fisher, 58 F.3d 96, 99 (4th Cir.), cert. denied, ___ U.S. ___, 64 U.S.L.W. 3270 (U.S. Oct. 10, 1995) (No. 95-5923). His claims that the sentencing court failed to make the required factual findings were waived by his failure to assert them on direct appeal and are belied by the record. Stone v. Powell, 428 U.S. 465, 477 n.1 (1976); United States v. Emanuel, 869 F.2d 795 (4th Cir. 1989). The district court found Appellant's claims of ineffective assistance of counsel "too conclusory to warrant further inquiry." However, Appellant may be able to particularize these claims to state a potentially meritorious ground for relief. See Cruz v. Beto, 405 U.S. 319 (1972); Coleman v. Peyton, 340 F.2d 603, 604 (4th Cir. 1965). Therefore, we affirm the district court's order denying Appellant's § 2255 motion as modified to reflect that the denial of relief is without prejudice to Appellant's ability to file a subsequent § 2255 motion to allege, in detail, his claims of ineffective assistance of counsel. 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 AS MODIFIED