

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 96-6370

RONALD RAY YOST,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of West Virginia, at Charleston.
Charles H. Haden II, Chief District Judge.
(CR-90-47, CA-95-891)

Submitted: January 20, 1998

Decided: April 17, 1998

Before WILKINS, HAMILTON, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Ronald Ray Yost, Appellant Pro Se. Michael Lee Keller, OFFICE OF
THE UNITED STATES ATTORNEY, Charleston, West Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Appellant appeals the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997). We have reviewed the record and the district court's opinion accepting the recommendation of the magistrate judge and find no reversible error. Appellant asserts that he was denied due process of law at sentencing because the Government failed to show and the court failed to expressly find that the methamphetamine attributed to Appellant was D-methamphetamine. Appellant failed to raise this issue on direct appeal. We conclude that even if Appellant has demonstrated cause for his default, he has not established actual prejudice. We therefore find the claim barred by his default. See United States v. Frady, 456 U.S. 152, 167-68 (1982).

Appellant also asserts that counsel was ineffective at sentencing and on appeal for failing to challenge an inadequate factual determination as to type of methamphetamine attributed to him at sentencing. We affirm the district court's order as to this claim because Appellant failed to establish that but for counsel's errors, he would not have pled guilty. See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Strickland v. Washington, 466 U.S. 668 (1984). Finally, we find that Appellant has waived review of his claim that the district court abused its discretion when it assumed the substance attributed to Appellant was D-methamphetamine because he did not raise this claim at sentencing or on direct appeal. See Stone v. Powell, 428 U.S. 465, 477 n.10 (1976); United States v. Emanuel, 869 F.2d 795, 796 (4th Cir. 1989).

Accordingly, we affirm the district court's order. 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