

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-6376

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SAMUEL DEWITT MCCOTTER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (CR-90-27-BO, CA-96-190-4-BO)

Submitted: September 25, 1997

Decided: October 8, 1997

Before LUTTIG, MICHAEL, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Samuel DeWitt McCotter, Appellant Pro Se. Rudolf A. Renfer, Jr., 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Unpublished opinions are not binding precedent in this circuit.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:

Appellant appeals from the district court's order denying relief on his motion for modification of his prison term. Appellant characterized his action as a motion for relief under 18 U.S.C.A. § 3582(c) (West Supp. 1997). He alleged that his 18 U.S.C.A. § 924(c) (West Supp. 1997) conviction was rendered invalid by Bailey v. United States, ___ U.S. ___, 64 U.S.L.W. 4039 (U.S. Dec. 6, 1995) (Nos. 94-7448, 94-7492). The district court found that Appellant failed to state a claim under 18 U.S.C.A. § 3582(c) and, also construing the action as a 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997) motion, found that he failed to state grounds for habeas corpus relief.

Regardless of how the action is construed, we find that it lacks merit. Consequently, 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