

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-6602

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DWIGHT ROLLAND SHELTON, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Elizabeth V. Hallanan, Senior District Judge. (CR-92-149, CA-96-424-5)

Submitted: August 14, 1997

Decided: August 25, 1997

Before NIEMEYER, Circuit Judge, and BUTZNER and PHILLIPS, Senior Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dwight Rolland Shelton, Jr., 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Unpublished opinions are not binding precedent in this circuit.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).

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. Accordingly, we deny a certificate of appealability and dismiss substantially on the reasoning of the district court. United States v. Shelton, Nos. CR-92-149; CA-96-424-5 (S.D.W. Va. Mar. 18, 1997).

In addition, Appellant attempts to assert a claim raised for the first time in his objections to the magistrate judge's report and recommendation, contending that the district court erred in imposing a sentence for "crack" cocaine when Appellant pled guilty to a powder cocaine offense. Appellant's claim was not raised in his § 2255 motion, and he never made a motion to amend his initial filing. In any event, the claim is factually unsupported in the record. Further, nonconstitutional claims that could have been raised on appeal, but were not, may not be asserted in collateral proceedings. See Stone v. Powell, 428 U.S. 465, 477 n.10 (1976); United States v. Emanuel, 869 F.2d 795, 796 (4th Cir. 1989). A district court's technical application of the sentencing guidelines is a nonconstitutional claim. See United States v. Marin, 961 F.2d 493, 496 (4th Cir. 1992). Because Appellant's claim alleges nonconstitutional error and could properly have been raised on appeal, his claim has been waived.

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