

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-6055

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BOBBY SCEAN SANG,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., District Judge. (CR-94-271, CA-97-831-1)

Submitted: March 26, 1998

Decided: April 9, 1998

Before WIDENER and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Bobby Scean Sang, Appellant Pro Se. Clifton Thomas Barrett, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant seeks to appeal 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 alleged that the district court should have reduced his base offense level under the "safety valve" provision, U.S. SENTENCING GUIDELINES MANUAL § 5C1.2 (1994). Because Appellant failed to raise this nonconstitutional claim in his direct appeal, he may not assert it in this collateral proceeding. See Stone v. Powell, 428 U.S. 465, 477 n.10 (1976). 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