

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 99-6829

ENOCH WESLEY CLARK,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
J. Calvitt Clarke, Jr., Senior District Judge.
(CR-98-15, CA-99-584-2)

Submitted: September 9, 1999

Decided: September 22, 1999

Before ERVIN,* WILKINS, and HAMILTON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Enoch Wesley Clark, Appellant Pro Se. Darryl James Mitchell, Special Assistant United States Attorney, Norfolk, Virginia, for Appellee.

*Judge Ervin participated in the consideration of this case but died prior to the time the decision was filed. The decision is filed by a quorum of the panel pursuant to 28 U.S.C. § 46(d).

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Enoch Wesley Clark seeks to appeal the district court's orders denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 1999) and denying his motion for reconsideration. We have reviewed the record and the district court's orders and find no reversible error. We find that Clark's challenge to the district court's calculation of his criminal history category is not cognizable on collateral review because he failed to raise this issue at sentencing or on direct appeal. See Stone v. Powell, 428 U.S. 465, 477 n.10 (1976). We also find that the district court properly denied Clark's motion for reconsideration. Because Clark raised a new claim regarding the effectiveness of his counsel, the motion was in fact a second or successive § 2255 motion. Denial was proper because Clark failed to obtain authorization from this court to file a second or successive § 2255 motion. See 28 U.S.C.A. § 2244(d) (West Supp. 1999). Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. See United States v. Clark, Nos. CR-98-15; CA-99-584-2 (E.D. Va. May 10 & June 16, 1999).* 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

*Although the district court's order denying the motion for reconsideration is marked as "filed" on June 15, 1999, the district court's records show that it was entered on the docket sheet on June 16, 1999. Pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date the order was entered on the docket sheet that we take as the effective date of the district court's decision. See Wilson v. Murray, 806 F.2d 1232, 1234-35 (4th Cir. 1986).