

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 01-4258

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GEORGE ROHLSSEN,  
*Appellant*

v.

UNITED STATES OF AMERICA

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On Appeal From The District Court of the Virgin Islands  
(D.C. No. 00-cv-00067)

District Judge: Honorable Thomas K. Moore

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Submitted Under Third Circuit LAR 34.1(a)  
December 10, 2003

Before: NYGAARD, BECKER, and STAPLETON, *Circuit Judges*

(Filed: January 9, 2004)

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OPINION

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BECKER, *Circuit Judge*.

This is an appeal from an order of the District Court denying the motion of George Rohlsen for relief from judgment under 28 U.S.C. § 2255. The judgment attacked Rohlsen's conviction by a jury on drug possession charges in violation of 21 U.S.C. § 841. He was sentenced to 262 months in prison. We affirmed the conviction in a not precedential opinion, *United States v. Riviere*, 185 F.3d 864 (3d Cir. 1999), and Rohlsen's

petition for a writ of certiorari was denied, *Rohlsen v. United States*, 528 U.S. 976 (1999).

The gravamen of the § 2255 petition is that his sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000) because there was no factual determination (beyond a reasonable doubt) by the jury of drug quantity. The government responded that *Apprendi* did not apply because *Apprendi* applies only to factual determinations that increase a statutory maximum sentence which, the government maintains, is not the case here (though *Rohlsen* says that it is).

At all events, since *Rohlsen*'s conviction became final before *Apprendi* was decided, *Apprendi* would have to be retroactive on collateral review in order for us to grant relief. Because that question was then in flux, this Court granted a certificate of appealability as to the *Apprendi* issue. However, we have since decided *United States v. Jenkins*, 333 F.3d 151 (3d Cir. 2003), and *United States v. Swinton*, 333 F.3d 481 (3d Cir. 2003), which held that *Apprendi* is not retroactive on collateral review. Thus we cannot grant relief to *Rohlsen* on the claim on which we granted a certificate of appealability.

We have considered the other matters raised by *Rohlsen* in his § 2255 petition, noted in the margin,<sup>1</sup> but agree with Judge Moore that they lack merit. The order of the

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<sup>1</sup>In his petition, *Rohlsen* claims that he was prejudiced by ineffective assistance of counsel for failing to challenge the presentence report as erroneous; for failing to present evidence of entrapment; for raising frivolous issues on appeal; for not allowing *Rohlsen* to testify at the suppression hearing; for calling witnesses whose testimony did not help *Rohlsen*; for failing to object to the Court's jury instructions which erroneously defined "reasonable doubt"; and for allowing his right to a speedy trial to be violated. He also

District Court denying relief will be affirmed.

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claimed that the District Court incorrectly applied two points each pursuant to § 4A1.1(b) of the United States Sentencing Guidelines to two prior convictions that were related and that the District Court erred by applying a two point enhancement for obstruction of justice pursuant to U.S.S.G. § 3C1.1.

TO THE CLERK:

Kindly file the foregoing opinion.

/s/ Edward R. Becker  
Circuit Judge