

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2298

Henry Lo Carter,

Appellant,

v.

United States of America,

Appellee.

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* Appeal from the United States

* District Court for the

* District of Minnesota.

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* [UNPUBLISHED]

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Submitted: December 6, 2001

Filed: December 11, 2001

Before McMILLIAN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Henry Lo Carter is serving a 210-month term of imprisonment following his guilty plea to a crack-cocaine offense. See United States v. Carter, 91 F.3d 1196, 1197-99 (8th Cir. 1996) (per curiam). In this 28 U.S.C. § 2241 proceeding, Carter claimed that his sentence was unlawful under Apprendi v. New Jersey, 530 U.S. 466 (2000), and that the remedy under 28 U.S.C. § 2255 was inadequate or ineffective to test the legality of his detention. The district court¹ denied relief, and Carter appeals.

¹The Honorable David S. Doty, United States District Judge for the District of Minnesota, adopting the report and recommendation of the Honorable Arthur J. Boylan, United States Magistrate Judge for the District of Minnesota.

Even if his claim were cognizable in this collateral proceeding--which it is not, see United States v. Moss, 252 F.3d 993, 999-1003 (8th Cir. 2001) (concerning Appendi); United States v. Lurie, 207 F.3d 1075, 1077 (8th Cir. 2000) (concerning whether § 2255 remedy is “inadequate or ineffective”)--relief would not be available to Carter, see 21 U.S.C. § 841(b)(1)(C) (20 years imprisonment authorized for offense involving unspecified quantity of schedule I or II drugs); United States v. Aguayo-Delgado, 220 F.3d 926, 934 (8th Cir.) (no Appendi error where sentence was within range authorized by offense of conviction without regard to quantity), cert. denied, 531 U.S. 1026 (2000).

Accordingly, we affirm. Carter’s request for appointment of counsel is denied.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.