

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7550

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

NATHAN LEE FOSTER, a/k/a Plum,

Defendant - Appellant.

No. 06-6487

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

NATHAN LEE FOSTER,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern
District of North Carolina, at Raleigh. James C. Fox, Senior
District Judge. (5:03-CR-319-01; 5:05-CV-553-F)

Submitted: June 5, 2006

Decided: June 21, 2006

Before WILLIAMS, MICHAEL, and SHEDD, Circuit Judges.

No. 05-7550 dismissed; No. 06-6487 affirmed by unpublished per curiam opinion.

Nathan Lee Foster, Appellant Pro Se. Winnie Jordan Reaves, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In appeal No. 05-7550, Nathan Lee Foster seeks to challenge the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion. In appeal No. 06-6487, he challenges the district court's denial of his "Place Holder" motion, in which he sought sixty days to prepare a motion for collateral relief in light of United States v. Booker, 543 U.S. 220 (2005).

With respect to Foster's appeal of the denial of his § 2255 motion, the order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of his constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Foster has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss appeal No. 05-7550.

With respect to appeal No. 06-6487, our decision in United States v. Morris, 429 F.3d 65 (2005), precludes Foster from

preparing a motion that would rely on the retroactive application of Booker to his case on collateral review. We accordingly affirm the district court's decision in appeal No. 06-6487. See United States v. Foster, 5:03-CR-319-01 (E.D.N.C. Mar. 3, 2006).

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.

No. 05-7550 DISMISSED
No. 06-6487 AFFIRMED