

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-7568**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRY KERMIT JOHNSON,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (5:98-cr-00289-RKV-6; 5:03-cv-00049-RLV)

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Submitted: December 11, 2008                      Decided: December 18, 2008

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Before NIEMEYER, DUNCAN, and AGEE, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Terry Kermit Johnson, Appellant Pro Se. Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Terry Kermit Johnson seeks to appeal the district court's order denying his motion to reopen under Fed. R. Civ. P. 60(b)(4).<sup>\*</sup> The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). 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 the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. 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 Johnson has not made the requisite showing. 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

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<sup>\*</sup> The underlying Rule 60(b) motion is Johnson's sixth post-judgment motion seeking reconsideration of the district court's July 2006 order denying relief on his 28 U.S.C. § 2255 (2000) motion.

materials before the court and argument would not aid the decisional process.

DISMISSED