

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8013

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDDIE MCLEAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:02-cr-00037-BO-1; 5:07-cv-00119-BO)

Submitted: April 16, 2009

Decided: April 23, 2009

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

William Gregory Duke, Greenville, North Carolina, for Appellant.
Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eddie McLean seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2008) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). 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) (2006). 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).

In this case, the district court granted a certificate of appealability on the issue of whether McLean's two prior convictions for aggravated assault were properly treated as separate offenses under U.S. Sentencing Guidelines Manual § 4A1.2(a) (2007), in light of Amendment 709 to the federal sentencing guidelines that revised this provision after McLean's sentencing. Because Amendment 709 was not made retroactive, see USSG § 1B1.10(c), and the assaults were properly treated as

separate offenses under the prior guideline in effect at the time of sentencing, we affirm the district court's denial of relief on this claim.

As to McLean's remaining claims, we have independently reviewed the record and conclude that he has not made the requisite showing for a certificate of appealability. Accordingly, we deny a certificate of appealability and dismiss the appeal as to these claims. We grant McLean's motion for counsel to withdraw, in which counsel acquiesces. 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.

AFFIRMED IN PART;
DISMISSED IN PART