UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6045

UNITED STATES OF AMERICA,

                Plaintiff - Appellee,

      v.

KEVIN V. BURTON,

                Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:03-cr-00006-HEH-1; 3:08-cv-00717-HEH)

Submitted: July 23, 2009   Decided: July 29, 2009

Before WILKINSON and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Linda S. Sheffield, LINDA S. SHEFFIELD ATTORNEY AT LAW, Atlanta, Georgia, for Appellant. Richard Daniel Cooke, Assistant United States Attorney, Richmond, Virginia, for Appellee.

PER CURIAM:

Kevin V. Burton seeks to appeal the district court's order construing his motion for writ of error audita querela, 28 U.S.C. § 1651 (2006), as a successive motion pursuant to 28 U.S.C.A. § 2255 (West Supp. 2009) and denying relief. 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). We have independently reviewed the record and conclude that Burton 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 materials before the court and argument would not aid the decisional process.

DISMISSED