

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7314

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WAYNE C. JOHNSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (3:09-cv-00421-RLW; 3:99-cr-00119-RLW-1)

Submitted: November 17, 2009

Decided: November 24, 2009

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Wayne C. Johnson, Appellant Pro Se. Stephen David Schiller, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Wayne C. Johnson seeks to appeal the district court's order construing his petition for a writ of audita querela as a successive 28 U.S.C.A. § 2255 (West Supp. 2009) motion, and dismissing it for lack of jurisdiction. 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 Johnson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny Johnson's motion to compel disclosure from all parties of interest. 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