

ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6234

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHN SAMUEL LEIGH,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. W. Craig Broadwater, District Judge. (3:00-cr-00057-WCB; 3:04-cv-00022-WCB)

Submitted: July 9, 2007

Decided: September 13, 2007

Before NIEMEYER, TRAXLER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Charles Henry Nave, CHARLES H. NAVE, P.C., Roanoke, Virginia, for Appellant. Thomas Oliver Mucklow, Assistant United States Attorney, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Samuel Leigh seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion. We previously dismissed the appeal, but subsequently granted rehearing. 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 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).

Although the district court erroneously concluded that Leigh failed to file timely objections to the magistrate judge's recommendation, we have independently reviewed the record and conclude that Leigh has not made the requisite showing for issuance of a certificate of appealability. 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