

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6420

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TRACY DEMONT HUMPHRIES,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (2:91-cr-00153-UA-2; 1:05-cv-00359-JAB)

Submitted: July 25, 2006

Decided: August 1, 2006

Before WILLIAMS, MOTZ, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tracy Demont Humphries, Appellant Pro Se. Angela Hewlett Miller, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Tracy Demont Humphries seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (2000), which the district court construed as a successive 28 U.S.C. § 2255 (2000) motion. 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). We have independently reviewed the record and conclude that Humphries has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, 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