

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6425

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES GILBERT BERRY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James P. Jones, Chief District Judge. (5:02-cr-30046-jpj-10; 7:05-cv-00574-jpj)

Submitted: June 15, 2006

Decided: June 20, 2006

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Joseph Abraham Sanzone, SANZONE & BAKER, PC, Lynchburg, Virginia, for Appellant. William Frederick Gould, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

James Gilbert Berry seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2000) motion and subsequent motion to reconsider. The orders are 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 Berry has not made the requisite showing. See United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005) (holding that United States v. Booker, 543 U.S. 220 (2005), is not retroactively applicable to cases on collateral review). 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