

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6648

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID M. SCATES,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (3:98-cr-00087-REP; 3:06-cv-00086-REP)

Submitted: July 25, 2006

Decided: August 3, 2006

Before WILLIAMS, MOTZ, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David M. Scates, Appellant Pro Se. Stephen Wiley Miller, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David M. Scates seeks to appeal the district court's order treating his "Motion to Correct Criminal Judgment and Motion to Correct Error Arising From Oversight" as a successive 28 U.S.C. § 2255 (2000) motion and dismissing it on that basis, and a subsequent order denying his motion for reconsideration. 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 Scates 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