

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6860

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KENNETH DWAYNE LOCKLEAR,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (5:96-cr-00044-BR-1)

Submitted: August 31, 2006

Decided: September 8, 2006

Before MICHAEL, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kenneth Dwayne Locklear, Appellant Pro Se. Frank DeArmon Whitney, United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Kenneth Dwayne Locklear seeks to appeal the district court's order construing his "place holder motion" as a 28 U.S.C. § 2255 (2000) motion and denying relief. 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 Locklear has not made the requisite showing.* Accordingly, we deny a certificate of appealability and

*To the extent Locklear's motion could have been construed as a petition under 28 U.S.C. § 2241 (2000), relief would not be warranted because the decision in United States v. Booker, 543 U.S. 220 (2005), is not retroactively applicable on collateral review. See United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005).

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