

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7553

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MALIK ORMASHA YARBOROUGH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:93-cr-00402-CMH-5)

Submitted: March 2, 2007

Decided: March 9, 2007

Before WILKINSON, WILLIAMS, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Malik Ormasha Yarborough, Appellant Pro Se. James L. Trump, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Malik Ormasha Yarborough seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2000) motion and denying reconsideration of that order. While the district court construed Yarborough's § 2255 motion as successive pursuant to 28 U.S.C. § 2244, we find the instant motion to be Yarborough's first § 2255 motion. See Castro v. United States, 540 U.S. 375 (2003). Nevertheless, the district court's 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 Yarborough 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