

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7586

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DENNIS RICHARD DASHER, a/k/a Timothy Scott
Jones,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Newport News. Jerome B. Friedman,
District Judge. (4:03-cr-00140-JBF)

Submitted: March 28, 2007

Decided: April 16, 2007

Before NIEMEYER, MOTZ, and SHEDD, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam
opinion.

Dennis Richard Dasher, Appellant Pro Se. Lisa Rae McKeel, OFFICE OF
THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dennis Richard Dasher seeks to appeal the district court's orders denying his motion for a downward departure under Fed. R. Crim. P. 35(b) and denying his 28 U.S.C. § 2255 (2000) motion. For the reasons that follow, we affirm in part and dismiss in part.

The district court denied Dasher's motion for a reduction of his sentence under Rule 35(b) as it is well-settled that whether to file a Rule 35(b) motion is a matter left to the Government's discretion. Fed. R. Crim. P. 35(b); United States v. Dixon, 998 F.2d 228, 230 (4th Cir. 1993). Here, the Government found Dasher's assistance insufficient to merit a motion and Dasher has failed to show the Government's refusal to move for a reduction was based on an unconstitutional motive. Wade v. United States, 504 U.S. 181, 185-86 (1992). Thus, we affirm the district court's order denying Rule 35(b) relief.

The second order that Dasher appeals denied his § 2255 motion, on the ground that it was filed beyond the one-year limit for such actions. The order also denied Dasher's motion to reconsider the denial of his Rule 35(b) motion. To the extent Dasher appeals from the denial of § 2255 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 Dasher has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss this portion of 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.

AFFIRMED IN PART;
DISMISSED IN PART