

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-7611**

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AHMED MALACHI ABDEL-AZIZ,

Plaintiff - Appellant,

versus

UNITED STATES OF AMERICA,

Defendant - Appellee.

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Appeal from the United States District Court for the District of Maryland, at Baltimore. William M. Nickerson, Senior District Judge. (1:91-cr-00250-WMN; 1:06-cv-02239-WMN)

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Submitted: December 21, 2006

Decided: January 4, 2007

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Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Ahmed Malachi Abdel-Aziz, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ahmed Malachi Abdel-Aziz seeks to appeal the district court's order construing Abdel-Aziz's Fed. R. Civ. P. 60(b) motion as a motion filed pursuant to 28 U.S.C. § 2255 (2000), and then dismissing it for lack of jurisdiction. An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2255 motion solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We have independently reviewed the record and conclude that Abdel-Aziz has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

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

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\*To the extent Abdel-Aziz seeks to raise claims for the first time on appeal, we decline to consider such claims. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993).

materials before the court and argument would not aid the decisional process.

DISMISSED