

**UNPUBLISHED**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-7768**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CARLOSE DEMOND ROBINSON,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., District Judge. (6:03-cr-00616-HMH-1)

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Submitted: March 28, 2007

Decided: April 12, 2007

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Before TRAXLER, GREGORY, and DUNCAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Carlose Demond Robinson, Appellant Pro Se. Reginald I. Lloyd, United States Attorney, Columbia, South Carolina, Isaac Louis Johnson, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Carlose Demond Robinson appeals the district court's orders denying his Fed. R. Civ. P. 27 motion and his Fed. R. Crim. P. 33 motion. We have reviewed the record and find no abuse of discretion. We note that a Rule 27 motion to perpetuate testimony is available only under the civil rules, which are inapplicable to a criminal proceeding such as this. While the district court had jurisdiction to entertain the Rule 33 motion for new trial based on newly discovered evidence,<sup>1</sup> we conclude that the motion fails on the merits.<sup>2</sup> Accordingly, we affirm. We deny the motion to appoint counsel. 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

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<sup>1</sup>See United States v. Cronic, 466 U.S. 648, 667 n.42 (1984).

<sup>2</sup>See United States v. Rouse, 410 F.3d 1005, 1009 (8th Cir. 2005); United States v. Wallace, 528 F.2d 863, 866 (4th Cir. 1976).