

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6048

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID MICHAEL SCATES,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (3:98-cr-00087-REP; 3:06-cv-830)

Submitted: October 18, 2007

Decided: October 23, 2007

Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Michael Scates, Appellant Pro Se. Stephen Wiley Miller, Cameron Sue Heaps, Noelle Dalrymple, S. David Schiller, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Michael Scates seeks to appeal the district court's order construing Scates' second "Motion to Correct Error Arising from Oversight and/or Omission" and "Supplemental Motion to Correct Error Arising from Oversight and/or Omission" as successive 28 U.S.C. § 2255 (2000) motions and dismissing them on that basis, and a subsequent order denying his "Motion to Implement Court Order." The 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 Scates has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, 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