

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6443

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUAN HERNANDEZ, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, District Judge. (7:04-cr-00134-SGW; 7:06-cv-00594-SGW)

Submitted: May 10, 2007

Decided: May 15, 2007

Before MOTZ and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Juan Hernandez, Jr., Appellant Pro Se. Ronald Andrew Bassford, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Juan Hernandez, Jr., seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion. 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 Hernandez has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Hernandez's motion for leave to proceed in forma pauperis, and dismiss the appeal.* We dispense with oral argument because the facts and legal contentions are adequately

*We decline to consider Hernandez's claim of ineffective assistance of counsel, asserted for the first time on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (stating that issues raised for first time on appeal will not be considered absent a showing of plain error or a fundamental miscarriage of justice).

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

DISMISSED