UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6596

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KERMIT C. BROWN, a/k/a Brian Mackey, a/k/a Destruction, a/k/a Bear,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:98-cr-00047-JBF)

Submitted: July 19, 2007 Decided: July 25, 2007

Before MOTZ and GREGORY, Circuit Judges, and WILKINS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Kermit C. Brown, Appellant Pro Se. Darryl James Mitchell, Special Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kermit C. Brown seeks to appeal the district court's orders construing his "Petitioner's Request for Judicial Assistance and Instructions on Avenue for Correction of Violation of His Substantial Rights" as a successive 28 U.S.C. § 2255 (2000) motion, and dismissing it on that basis, and denying his subsequent motion for reconsideration. Brown's motion for reconsideration was not filed within ten days of the district court's order dismissing his request for judicial assistance as a successive § 2255 motion as required by Fed. R. Civ. P. 59(e). The time for appealing that order expired before he filed his notice of appeal on April 3, 2007, and therefore only the denial of the motion for reconsideration is preserved for appeal. See Alston v. MCI Commc'ns Corp., 84 F.3d 705, 706 (4th Cir. 1996) (only a timely Rule 59(e) motion tolls time period for filing notice of appeal); Fed. R. App. P. 4(a)(4)(A)(iv)-(vi).

The order denying reconsideration 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 Brown 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