

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 07-7254

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

NIGEL CLARKE,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (4:02-cr-00060-H-5; 4:07-cv-00020-H)

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Submitted: October 18, 2007

Decided: October 26, 2007

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Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Nigel Clarke, Appellant Pro Se. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Nigel Clarke seeks to appeal the district court's order denying his second motion to reconsider the court's prior order dismissing as untimely 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); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). 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 Clarke has not made the requisite showing. Accordingly, we deny Clarke's motions for a certificate of appealability and to remand the case, 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