UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6195

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TYRONE LAWRENCE HARRIS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Walter Dekalb Kelley, Jr., District Judge. (2:06-cr-00031-WDK-TEM-01; 2:07-cv-00202-WDK)

Submitted: May 26, 2009 Decided: June 15, 2009

Before TRAXLER, KING, and SHEDD, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Tyrone Lawrence Harris, Appellant Pro Se. Robert John Krask, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tyrone Lawrence Harris has filed an appeal from the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2008) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006).

Because the district court has issued a certificate of appealability on Harris's first claim, whether counsel was ineffective for failing to note an appeal, we have considered this claim on the merits. Finding no clear error in the district court's credibility determinations, we uphold the court's finding that counsel was not directed to file a notice of appeal and did not have a duty to consult with Harris under Roe v. Flores-Ortega, 528 U.S. 470, 478-80 (2000). We therefore affirm the district court's order in part.

We will not issue a certificate of appealability as to Harris's remaining claims absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). 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 Harris has not made the requisite showing. Accordingly, we deny a certificate of appealability as to Harris's remaining three claims and dismiss the appeal in part. We deny Harris's pending motions for appointment of 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 IN PART;
DISMISSED IN PART