

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6219

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEVEN AUBREY BURNETTE,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Senior District Judge. (7:99-cr-00109-jct-mfu-1; 7:08-cv-80019-jct-mfu)

Submitted: May 1, 2008

Decided: June 9, 2008

Before WILKINSON, MICHAEL, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Steven Aubrey Burnette, Appellant Pro Se. Thomas Jack Bondurant, Jr., Assistant United States Attorney, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Steven Aubrey Burnette seeks to appeal the district court's order denying as successive 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 Burnette has not made the requisite showing. Accordingly, we deny Burnette's motion for certificate of appealability and dismiss the appeal. We also deny Burnette's motions for appointment of counsel and for the preparation of a transcript at the Government's expense. We dispense with oral argument because the facts and legal contentions

*Although Burnette characterized the motion as one under 28 U.S.C. § 1651 (2000), the district court properly construed the motion as a § 2255 proceeding. See In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997) (en banc).

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

DISMISSED