

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-6300**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC LAMONT WHITENER,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:90-cr-00085-FDW-3; 3:97-cv-00262-FDW)

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Submitted: June 26, 2008

Decided: July 2, 2008

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Before KING and DUNCAN, Circuit Judges, and WILKINS, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Eric Lamont Whitener, Appellant Pro Se. James Michael Sullivan, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Lamont Whitener seeks to appeal the district court's order granting his Fed. R. Civ. P. 60(b)(4) motion to vacate a prior order of the court dismissing his 28 U.S.C. § 2255 (2000) motion, and a subsequent order denying his motion to alter or amend judgment. The orders are 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 Whitener has not made the requisite showing. Accordingly, we deny a certificate of appealability 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