

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7622

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RUFUS TIMOTHY BRINN, III,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (1:06-cr-00468-GBL-1; 1:08-cv-00276-GBL)

Submitted: April 6, 2009

Decided: June 9, 2009

Before WILKINSON, MOTZ, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Rufus Timothy Brinn, III, Appellant Pro Se. Laura Elizabeth Zirkle, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rufus Timothy Brinn, III, seeks to appeal the district court's order dismissing his 28 U.S.C.A. § 2255 (West Supp. 2008) motion as untimely. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). 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) (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, although the district court's dispositive procedural ruling that Brinn's § 2255 motion was untimely is debatable, see Clay v. United States, 537 U.S. 522, 532 (2003), Brinn has not made the requisite showing with respect to the merits of his constitutional claims. 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