

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8036

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK LEE SHUMAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (2:04-cr-00025-BO-1; 2:07-cv-00021-BO)

Submitted: June 22, 2009

Decided: June 26, 2009

Before MICHAEL, TRAXLER, and SHEDD, Circuit Judges.

Appeal dismissed; petition denied by unpublished per curiam opinion.

Mark Lee Shuman, Appellant Pro Se. Steve R. Matheny, Assistant United States Attorney, Clay Campbell Wheeler, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mark Lee Shuman seeks to appeal 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). 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 Shuman has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.*

Shuman also petitions for a writ of mandamus seeking an order to compel the district court to rule on his claims of

* We decline to consider the claims raised by Shuman in his informal brief that were not presented in his § 2255 motion in the district court. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993).

actual innocence raised for the first time in his application for a certificate of appealability. Our review of the docket sheet reveals that the district court entered an order denying Shuman's application for a certificate of appealability on January 21, 2009. Accordingly, because the district court has ruled on Shuman's application, we deny the mandamus petition as moot. 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.

APPEAL DISMISSED;
PETITION DENIED