

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8551

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARL EDWARD BENNETT,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Joseph F. Anderson, Jr., Chief District Judge. (0:07-cv-70021-JFA; 0:04-cr-00657-JFA-2)

Submitted: May 28, 2009

Decided: June 4, 2009

Before WILKINSON, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Carl Edward Bennett, Appellant Pro Se. Jimmie Ewing, Assistant United States Attorney, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Carl Edward Bennett 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 Bennett has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.* We

* To the extent Bennett also seeks to appeal from the district court's order, lowering his sentence from 360 months of imprisonment to 292 months under 18 U.S.C.A. § 3582(c)(2) (West 2000 & Supp. 2009), we note that he is entitled to no other relief. See United States v. Dunphy, 551 F.3d 247, 251-52 (4th Cir. 2009) (noting that when a sentence is within the Sentencing Guidelines applicable at the time of the original sentencing, a district court is not authorized under § 3582(c)(2) to reduce a defendant's sentence below the amended sentencing range).

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