UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6347

MICHAEL ALAN CRUZEN,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, Senior District Judge. (7:08-cv-00546-jlk-mfu)

Submitted: July 30, 2009 Decided: August 5, 2009

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Michael Alan Cruzen, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Alan Cruzen, a federal prisoner, appeals the district court's order denying relief on his motion to void judgment brought under Fed. R. Civ. P. 60(b) and 28 U.S.C. §§ 1651, 2241 (2006). We have reviewed the record and find no reversible error. Accordingly, we affirm the portion of the district court's order denying relief under Rule 60(b) and 28 U.S.C. §§ 1651, 2241 for the reasons stated by the district court. See Cruzen v. United States, No. 7:08-cv-00546-jlk-mfu (W.D. Va. Feb. 19, 2009).

To the extent the district court properly considered Cruzen's motion under 28 U.S.C.A. § 2255 (West Supp. 2009) and dismissed it for lack of jurisdiction, we conclude a certificate of appealability should not issue. 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 Cruzen has not made the requisite showing. Accordingly, we dismiss the portion of the appeal construing Cruzen's claims under 28 U.S.C.A. § 2255.

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.

AFFIRMED IN PART;
DISMISSED IN PART