

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6618

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO ALBERTO GARCIA HOLGUIN, a/k/a Mario A. Garcia Olguin,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of Virginia, at Harrisonburg. Glen E. Conrad, District
Judge. (5:04-cr-00025-gec-mfu-4; 5:09-cv-80130-gec)

Submitted: July 30, 2009

Decided: August 5, 2009

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Mario Alberto Garcia Holguin, Appellant Pro Se. Ronald Mitchell
Huber, Assistant United States Attorney, Charlottesville,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mario Alberto Garcia Holguin seeks to appeal the district court's order dismissing as untimely his 28 U.S.C.A. § 2255 (West Supp. 2009) 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 Holguin 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