

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7321

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LLOYD GEORGE MAXWELL,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Marvin J. Garbis, Senior District Judge. (1:87-cr-00371-MJG-2; 1:09-cv-00114-MJG)

Submitted: December 17, 2009

Decided: December 29, 2009

Before WILKINSON, NIEMEYER, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Lloyd George Maxwell, Appellant Pro Se. Richard Charles Kay, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lloyd George Maxwell seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b) motion. Because that motion directly attacked his conviction, the motion should have been characterized as a successive and unauthorized 28 U.S.C.A. § 2255 (West Supp. 2009) motion under United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003).

The district court's order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). 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 Maxwell has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

To the extent that Maxwell's notice of appeal and informal brief could be construed as a motion for authorization to file a successive § 2255 motion, we deny such authorization. See Winestock, 340 F.3d at 208. 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