

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7467

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY EARL MILLER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry F. Floyd, District Judge. (6:04-cr-00022-HFF-3)

Submitted: November 18, 2009

Decided: December 17, 2009

Before NIEMEYER, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Henry Earl Miller, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Earl Miller seeks to appeal the district court's order dismissing without prejudice his "motion/request to be informed why this Court will not apply [United States] v. Blackstock, 513 F.3d 128 (4th Cir. 2008) to this case," and his "motion/demand that attached 28 USC § 2255 motion be accepted and filed as a first § 2255 motion as mandated in [United States] v. Blackstock, 513 F.3d 128 (4th Cir. 2008)." The order is not appealable unless a circuit judge or justice issues a certificate of appealability, and 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 habeas appellant meets this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable or wrong and that any dispositive procedural rulings by the district court are also debatable or wrong. Miller-El v. Cockrell, 537 U.S. 322, 326 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001).

We have independently reviewed the record and conclude that Miller has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We further deny Miller's pending motions to accept apology and for clarification. 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