

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7713

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH LAMONT BROOKS, a/k/a Kenny,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Cameron McGowan Currie, District Judge. (3:04-cr-00119-CMC-1)

Submitted: February 19, 2010

Decided: March 2, 2010

Before WILKINSON, MOTZ, and SHEDD, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Kenneth Lamont Brooks, Appellant Pro Se. Stacey Denise Haynes, Assistant United States Attorney, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth Lamont Brooks appeals the district court's order denying his petition for a writ of error coram nobis or audita querela, construing the petition, in part, as a successive 28 U.S.C.A. § 2255 (West Supp. 2009) motion, and dismissing that portion of the petition for lack of jurisdiction.

We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order to the extent that it denied the requested writs. See United States v. Brooks, No. 3:04-cr-00119-CMC-1 (D.S.C. Aug. 24, 2009).

However, the portion of the district court's order construing Brooks' petition as a successive § 2255 motion and dismissing it for lack of jurisdiction 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 reviewed the record and conclude that Brooks 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.

AFFIRMED IN PART;
DISMISSED IN PART