

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7793

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: March 16, 2010

Decided: March 17, 2010

Before NIEMEYER, MOTZ, and DAVIS, 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Dismissed by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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:

In February 2006, Henry Earl Miller filed in the district court a letter challenging his conviction and 300-month sentence imposed following his guilty plea to armed robbery, using and carrying a firearm during a crime of violence, and aiding and abetting in these offenses. The district court properly characterized this letter as a 28 U.S.C.A. § 2255 (West 2006 & Supp. 2009) motion, and ultimately denied relief. Miller has since filed numerous motions in the district court seeking to reinstate his ability to file a § 2255 motion.

Miller appeals the district court's text order denying his motion in which he asserts that his sentences were imposed in violation of the Double Jeopardy Clause. 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 Miller has not made the requisite showing. Accordingly, we deny Miller's motion for 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