

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7299

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARRELL EUGENE BANKS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, District Judge. (1:09-cr-00052-MR-1; 1:12-cv-00166-MR)

Submitted: November 18, 2014

Decided: November 21, 2014

Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

Affirmed in part, dismissed in part by unpublished per curiam opinion.

Darrell Eugene Banks, Appellant Pro Se. Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darrell Eugene Banks appeals the district court's August 13, 2014 order denying his ex parte motion. Insofar as Banks challenges the district court's denial of relief under Fed. R. Crim. P. 36, we have reviewed the record and find no reversible error. Accordingly, we affirm this portion of the order for the reasons stated by the district court. United States v. Banks, Nos. 1:09-cr-00052-MR-1 (W.D.N.C. filed Aug. 13, 2014 & entered Aug. 14, 2014).

Insofar as Banks challenges the court's construction of his motion as an unauthorized, successive motion under 28 U.S.C. § 2255 (2012), this portion of 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)(B) (2012). 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) (2012). We have independently reviewed the record and conclude that Banks has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (describing required showing); Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) (same). Accordingly, we deny a certificate of appealability and dismiss this portion of the appeal. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART