

Filed: March 4, 2003

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 02-7331
(CR-98-4, CA-02-475-7)

United States of America,

Plaintiff - Appellee,

versus

Michael Eugene Miller,

Defendant - Appellant.

O R D E R

The court amends its opinion filed February 12, 2003, as follows:

On page 2, line 16 -- the reference to "Glenn" is corrected to read "Miller."

For the Court - By Direction

/s/ Patricia S. Connor
Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7331

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL EUGENE MILLER,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. James P. Jones, District Judge. (CR-98-4, CA-02-475-7)

Submitted: February 6, 2003

Decided: February 12, 2003

Before WILKINS, MICHAEL, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael Eugene Miller, Appellant Pro Se. Steven Randall Ramseyer, OFFICE OF THE UNITED STATES ATTORNEY, Abingdon, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Michael Eugene Miller appeals the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion. An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a 28 U.S.C. § 2255 motion solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001). We have reviewed the record and conclude for the reasons stated by the district court that Miller has not made the requisite showing. See United States v. Miller, Nos. CR-98-4; CA-02-475-7 (W.D. Va. Aug. 1, 2002). Accordingly, we deny a certificate of appealability, deny Miller's motion for appointed counsel, and dismiss the appeal. See 28 U.S.C. § 2253(c) (2000). 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