

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6077

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LITTLE TOM CHILDRESS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, Senior District Judge. (CR-94-106, CA-00-937)

Submitted: February 20, 2003

Decided: February 28, 2003

Before LUTTIG, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Little Tom Childress, Appellant Pro Se. Ray B. Fitzgerald, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Little Tom Childress, a federal prisoner, appeals the district court's denial of his request for a certificate of appealability, which he filed in his effort to appeal the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000). An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(2000). Here, the district court denied a certificate of appealability because Childress failed to timely file his notice of appeal from the denial of his § 2255 motion, despite being given an extension of time to do so. Because the district court was without authority to further extend Childress' appeal time, Fed. R. App. P. 4(a), and because Childress failed to timely file his notice of appeal, Childress did not qualify for a certificate of appealability. See generally Rose v. Lee, 252 F.3d 676, 684 (4th Cir.), cert. denied, 534 U.S. 941 (2001). We have reviewed the record and conclude that Childress failed to make the requisite showing under § 2253, and the district court properly denied Childress' request for a certificate of appealability. Moreover, to the extent Childress seeks to appeal the district court's denial of his § 2255 motion, we are without jurisdiction to consider the appeal absent a timely notice of appeal. Fed. R. App. P. 4(a). 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.

DISMISSED