

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-6096**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PHILLIP HENRY CABBAGE,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James P. Jones, District Judge. (CR-99-17, CA-01-112)

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Submitted: May 20, 2003

Decided: June 19, 2003

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Before LUTTIG and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Phillip Henry Cabbage, Appellant Pro Se. Anthony Paul Giorno, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Phillip Henry Cabbage seeks 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 to this court 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). A certificate of appealability will not issue for claims addressed by a district court on the merits absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000).

We have independently reviewed the record and conclude that Cabbage has not satisfied this standard. See Miller-El v. Cockrell, \_\_\_ U.S. \_\_\_, 123 S. Ct. 1029 (2003). Accordingly, we deny Cabbage's motion for a certificate of appealability and dismiss the appeal. We grant his motion to proceed on appeal in forma pauperis and 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