

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7255

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GARY CUNNINGHAM,

Defendant - Appellant.

Appeal from the United States District Court for the Northern
District of West Virginia, at Wheeling. Frederick P. Stamp, Jr.,
District Judge. (CR-01-10, CA-02-106)

Submitted: October 9, 2003

Decided: October 21, 2003

Before LUTTIG, KING, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Gary Cunningham, Appellant Pro Se. Samuel Gerald Nazzaro, Jr.,
Assistant United States Attorney, Wheeling, West Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Gary Cunningham, seeks to appeal the district court's order adopting the magistrate judge's recommendation and 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). A certificate of appealability will not issue for claims addressed by a district court absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, ___, 123 S. Ct. 1029, 1040 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir.), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Cunningham has not made the requisite showing. 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