

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6208

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL DAVID WOLFE,

Defendant - Appellant.

No. 04-6425

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL DAVID WOLFE,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern
District of Virginia, at Newport News. Raymond A. Jackson,
District Judge. (CR-02-39; CA-03-95)

Submitted: June 10, 2004

Decided: June 17, 2004

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

No. 04-6208 is affirmed in part and dismissed in part, and No. 04-6425 is affirmed by unpublished per curiam opinion.

Michael David Wolfe, Appellant Pro Se. Laura P. Tayman, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In these consolidated appeals, Michael David Wolfe seeks to appeal the district court's orders denying relief on his motion filed under 28 U.S.C. § 2255 (2000) and Fed. R. Crim. P. 35 (No. 04-6208) and denying his motion to proceed in forma pauperis (No. 04-6425). 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 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 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, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). As to Wolfe's appeal of the denial of § 2255 relief, we have independently reviewed the record and conclude that Wolfe has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss as to that aspect of his appeal in No. 04-6208.

We may remedy the government's refusal to move for a reduction of sentence under Rule 35 only if the refusal is based on an unconstitutional motive, such as racial animus, lack of a

rational relationship to a legitimate governmental objective, or the government acted in bad faith. See United States v. Snow, 234 F.3d 187, 191 (4th Cir. 2000); Wade v. United States, 504 U.S. 181, 185-86 (1992). We conclude Wolfe has not demonstrated the Government acted in bad faith in refusing to move under Rule 35, and we therefore affirm that aspect of the district court's order in No. 04-6208. We deny Wolfe's motion for appointment of counsel and deny Wolfe's motion to proceed in forma pauperis. In No. 04-6425, we affirm the district court's order denying leave to proceed on appeal in forma pauperis. 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.

No. 04-6208: DISMISSED IN PART,
AFFIRMED IN PART;

No. 04-6425: AFFIRMED.