

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6360

GREGORY SCOTT CORBETT,

Petitioner - Appellant,

versus

JOSEPH BROOKS, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (CA-03-514-3)

Submitted: July 30, 2004

Decided: August 23, 2004

Before NIEMEYER and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Gregory Scott Corbett, Appellant Pro Se. Robert P. McIntosh, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Gregory Scott Corbett seeks to appeal the district court's order construing his 28 U.S.C. § 2241 (2000) petition as a successive 28 U.S.C. § 2255 (2000) motion and dismissing Corbett's action. Because the district court properly construed Corbett's action as a successive § 2255 motion, he may not appeal unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). See Reid v. Angelone, 369 F.3d 363, 374 n.7 (4th Cir. 2004) (finding certificate of appealability required even where district court lacked subject matter jurisdiction). 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).

We have independently reviewed the record and conclude that Corbett has not shown that the district court's procedural ruling that his § 2255 motion was successive was wrong or debatable. 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